COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968.

No. 244

JOHN S. BOYLE, ET AL.,

Appellants,

vs.

LAWRENCE LANDRY, ET AL.,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

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RELEVANT DOCKET ENTRIES.

October 26, 1967—Complaint.

November 9, 1967—Motion to dismiss of Appellants.

December 28, 1967—Opinion denying motion to dismiss.

January 19, 1968—Answer of Appellants.

March 1, 1968—Opinion of Three Judge Court.

April 2, 1968—Decree for permanent injunction filed by three judge court.

April 3, 1968—Appellants Notice of Appeal.

IN THE UNITED STATES DISTRICT COURT
Northern District of Illinois,
Eastern Division.

LAWRENCE LANDRY, ROMMELL MULLER, JOSEPH H. REYNOLDS, DAVID A. REYNOLDS, JAMES WASHINGTON, FRANK DITTO, ROBERT LUCAS, ROBERT BROWN, MICHAEL ROGERS, BERNARD HUGHES, ARNOLD FORD, VISSA MARIE TURNER, WYSINGO TURNER, ANDREW BROWN, CHARLES FLETCHER, JAMES JONES, HERMAN TOWNSEND, JEROME PARKER, RUDY HOOPER, and ACT, an unincorporated association,

Plaintiffs.

vs.

RICHARD J. DALEY, Mayor of the City of Chicago, Cook County, Illinois; JAMES CONLISK, Superintendent of Police of the City of Chicago, Illinois; JOHN S. BOYLE, Chief Judge of the Circuit Court of Cook County, Illinois; JOHN J. STAMOS, State's Attorney of Cook County, Illinois; RAYMOND F. SIMON, Corporation Counsel of the City of Chicago, Illinois; JOSEPH I. WOODS, Sheriff of Cook County, Illinois; RICHARD J. ELROD, Assistant Corporation Counsel, City of Chicago, Division of Ordinance Enforcement; MAURICE W. LEE, Magistrate, Circuit Court of Cook County, Illinois; JOHN S. LIMPERIS, Magistrate, Circuit Court of Cook County, Illinois; JOHN T. BURKE, JOSEPH RATKVICH and ROBERT KULOVITZ, Police Officers of the City of Chicago,

Defendants.

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COMPLAINT.

The Plaintiffs by their Complaint allege as follows:

1. This is a class action brought by the Plaintiffs pursuant to Rule 23(a), (1), (3), of the Federal Rules of Civil Procedure on their own behalf and on behalf of all others similarly situated. Plaintiffs and others similarly situated comprise one class, and certain of these Plaintiffs also bring this action on their own behalf and on behalf of all others similarly situated as Sub-Class One. Certain other Plaintiffs bring this action on their own behalf and on behalf of all others similarly situated as Sub-Class Two. Certain other Plaintiffs bring this action on their own behalf and on behalf of all others similarly situated as Sub-Class Three. Certain other Plaintiffs bring this action on their own behalf and on behalf of all others similarly situated as Sub-Class Four. Certain other Plaintiffs bring this action on their own behalf and on behalf of all others similarly situated as Sub-Class Five. Certain other Plaintiffs bring this action on their own behalf and on behalf of all others similarly situated as Sub-Class Six. Certain other Plaintiffs bring this action on their own behalf and on behalf of all others similarly situated as Sub-Class Seven. These seven classes have common claims and they therefore bring this civil action together.

1. Parties.

2. Plaintiffs, Rommell Muller, Joseph H. Reynolds and David A. Reynolds, members of Sub-Class One, are Negro citizens who were arrested on August 1, 1967, in the City of Chicago, Illinois, and were charged with violations of certain statutes of the State of Illinois, to-wit: Ill. Rev. Stats., Ch. 38, Sections 25-1 (a), (1) and (2); and 31-1, and with violations of certain ordinances of the City of

Chicago, to-wit: Ch. 11-33, and Ch. 193-1. These Plaintiffs are residents of the City of Chicago, Illinois, and are citizens of the United States. They face criminal prosecution before the Circuit Court of Cook County, Illinois, seated in the City of Chicago. They sue on behalf of themselves and all others similarly situated which class is too numerous to bring before this Court.

3. Plaintiff, James Washington, and other persons, members of Sub-Class Two, are Negro citizens who were arrested on May 21, 1967, in the City of Chicago, Illinois, and are charged with violations of certain statutes of the State of Illinois, to-wit: Ill. Rev. Stats., Ch. 38, Sections 12(3); 12-4(B)(5); 25-(a) (1) and (2); and 31-1, and with violations of certain ordinances of the City of Chicago, to-wit: Ch. 11-33 and Ch. 193-1. They are residents of the City of Chicago and are citizens of the United States. Plaintiff, James Washington, faces criminal prosecution before the Circuit Court of Cook County, Illinois, seated in the City of Chicago. He sues on behalf of himself and all others similarly situated, which class is too numerous to bring to this Court.

4. Plaintiffs, Jerome Parker, and Rudy Hooper, members of Sub-Class Three, are Negro citizens who were arrested on or about September 14, 1967, in the City of Chicago, Illinois, and were charged with violations of certain statutes of the State of Illinois, to-wit: Ill. Rev. Stats., Ch. 38, Sec. 25-1 (a), (1); 31-1, and with violations of certain ordinances of the City of Chicago, to-wit: Ch. 11-33 and Ch. 193-1. These Plaintiffs are residents of the City of Chicago, Illinois, and are citizens of the United States. They face criminal prosecution before the Circuit Court of Cook County, Illinois, seated in the City of Chicago. They sue on behalf of themselves and all others similarly situated, which class is too numerous to bring before this Court.

5. Plaintiffs, Arnold Ford, Bernard Hughes, Vissa Marie Turner, Wysingo Turner, Andrew Brown, Charles Fletcher, James Jones, and Herman Townsend, members of Sub-Class Four, are Negro citizens who were arrested on or about August 23, 1967, in the City of Chicago, Illinois, and charged with violations of certain statutes of the State of Illinois, to-wit: Ill. Rev. Stats., Ch. 38, Sec. 25-1, (a), (1); 31-1, and with violations of certain ordinances of the City of Chicago to-wit: Ch. 11-33 and Ch. 193-1. These Plaintiffs are residents of the City of Chicago, Illinois, and are citizens of the United States. They face criminal prosecution before the Circuit Court of Cook County, Illinois, seated in the City of Chicago. They sue on behalf of themselves and all others similarly situated which class is too numerous to bring before this Court.

6. Plaintiff, Frank Ditto, and other persons, members of Sub-Class Five are Negro citizens who were arrested on or about August 4, 1967, in the City of Chicago, Illinois, and charged with violations of certain statutes of the State of Illinois, to-wit: Ill. Rev. Stats., Ch. 38, Sec. 25 (a), (1), (2); 31-1; 12 (3); and with certain violations of certain ordinances of the City of Chicago, Illinois, to-wit: Ch. 193-1 and Ch. 11-33. They are residents of the City of Chicago, Illinois, and are citizens of the United States. Plaintiff, Frank Ditto, faces criminal prosecution before the Circuit Court of Cook County, Illinois, seated in the City of Chicago. He sues on behalf of himself and all others similarly situated which class is too numerous to bring before this Court.

7. Plaintiff, ACT, its members, associates and supporters all being members of Sub-Class Six, are an unincorporated association, maintaining offices in the City of Chicago, Illinois, whose purpose is to help to secure to all Negro citizens the rights guaranteed to them under the Constitution of the United States, and to end all forms of

racial segregation and discrimination in the interest of Negro and white citizens throughout the United States. In support of these purposes ACT, its staff and its supporters engage in all forms of legitimate protest activities, including, but not limited to picketing, demonstrations, rallies, mass meetings, voter registration drives, community organization and publication. ACT seeks to obtain its objectives through the utilization of the fundamental rights of free speech, press and assembly, and the right to petition the government for the redress of grievances.

8. Plaintiffs, Lawrence Landry, Robert Lucas and Robert Brown and Michael Rogers, are members of Sub-Class Seven. They are Negroes, and are representatives of the class of all Negroes in the City of Chicago. They are citizens of the United States. Said class, their members, friends and supporters are currently being intimidated in the exercise of their First Amendment rights through the wholesale use of unconstitutional statutes to prosecute members of the Negro community and to threaten, intimidate, hinder and deter said First Amendment rights. These Plaintiffs have in fact been intimidated, and are in fact deterred, hindered and prevented from exercising their said First Amendment rights; and particularly their rights of free speech and assembly because of the conduct of the Defendants hereinafter complained of.

9. Members of Sub-Class Seven above described are so numerous that joinder of all of their members herein is impractical. There are questions of law and of fact common to each sub-class; the sub-classes of the named Plaintiffs are typical of the claims of each other sub-class; and the named Plaintiffs will fairly and adequately protect the interests of each class. Defendants have acted on grounds generally applicable to the Plaintiffs in all sub-classes. Therefore, injunctive and declaratory relief is appropriate to the classes as a whole.

II. Defendants.

10. Defendant, Richard J. Daley, is a citizen of the State of Illinois and Mayor of the City of Chicago. He is sued individually and in his capacity as Mayor of the City of Chicago, Illinois.

11. Defendant, James Conlisk, is a citizen of the State of Illinois and Superintendent of Police of the City of Chicago, Illinois. He is sued individually and in his capacity as Superintendent of Police of the City of Chicago, Illinois.

12. Defendant, John S. Boyle, is a citizen of the State of Illinois and Chief Judge of the Circuit Court of Cook County, Illinois. He is sued individually and in his capacity as Chief Judge and as representative of the class of judges of the Circuit Court of Cook County, Illinois.

13. Defendant, John J. Stamos, is a citzen of the State of Illinois and State's Attorney of Cook County, Illinois. He is sued individually and in his capacity as State's Attorney of Cook County, Illinois.

14. Defendant, Joseph I. Woods, is a citizen of the State of Illinois and Sheriff of Cook County, Illinois. He is sued individually and in his capacity as Sheriff of Cook County, Illinois.

15. Defendant, Raymond F. Simon, is a citizen of the State of Illinois and Corporation Counsel for the City of Chicago, Illinois. He is sued individually and in his capacity as Corporation Counsel for the City of Chicago.

16. Defendant, Richard J. Elrod, is a citizen of the State of Illinois and an Assistant Corporation Counsel of the City of Chicago in charge of its Division of Ordinance Enforcement. He is sued individually and in his capacity as Assistant Corporation Counsel in charge of its Division of Ordinance Enforcement.

17. Defendant, Maurice W. Lee, is a citizen of the State

of Illinois and Magistrate of the Circuit Court of Cook County, Illinois. He is sued individually and in his capacity as Magistrate of the Circuit Court of Cook County and as representative of the class of Magistrates of the Circuit Court of Cook County, Illinois.

18. Defendant, John J. Limperis, is a citizen of the State of Illinois and Magistrate of the Circuit Court of Cook County, Illinois. He is sued individually and in his capacity as Magistrate of the Circuit Court of Cook County and as representative of the class of Magistrates of the Circuit Court of Cook County, Illinois.

19. Defendants, John T. Burke, Joseph Ratkvich and Robert Kulovitz are citizens of the State of Illinois and officers of the Police Department of the City of Chicago Illinois. They are sued individually and in their capacity as officers of the Police Department of the City of Chicago and as representative of the class of police officers of the City of Chicago.

20. The Defendants herein, under color of certain statutes of the State of Illinois and certain ordinances of the City of Chicago, have purposely entered into a plan or scheme of concerted and joint action with and among themselves and with other persons, some of whom are unknown to Plaintiffs, to subject or cause to be subjected the Plaintiffs, citizens of the United States, to the deprivation of rights, privileges and immunities secured to them by the constitution and laws of the United States.

21. The Defendants, or some of them, have met together, on more than one occasion; they have discussed, formulated, outlined and agreed to a detailed plan and scheme of harassment, arrests, detention, setting of exorbitant and excessive bail, prosecutions, trials, conviction, fines and imprisonment, which detailed plan and program they have agreed to direct against the Plaintiffs herein, and other

citizens of the United States, members of the same class as these Plaintiffs similarly situated, solely for the purpose of deterring, hindering, preventing and depriving these Plaintiffs of rights, privileges and immunities secured to them by the constitution and laws of the United States, and more particularly of the First Amendment privileges of speech and assembly. The Defendants, acting together and separately have committed specific acts in furtherance of, and to carry out the above described plan and scheme, as more particularly set forth below:

(a) Defendants, James Conlisk, and Richard J. Elrod, as a result of the above described meetings among Defendants, and formulation of the above described plan and scheme, have been designated by their superiors namely Defendants Richard J. Daley, and Raymond F. Simon, respectfully to be the principal persons to implement and carry out the aforesaid plan to deterrence, hindrance, and prevention of the exercise of Plaintiffs' First Amendment privileges of speech and assembly, by designating the occasions, places, manner and method of arrests, as well as the number of Plaintiffs to be arrested; and by actual designation of particular places of detention of particular Plaintiffs as distinguished from other persons arrested in the City of Chicago, Illinois.

(b) Defendants Maurice W. Lee, and John J. Limperis, acting with the other Defendants named herein and by and through the authority of their superiors, have willfully and unlawfully acted in furtherance of the aforesaid detailed plan and scheme by the willful and unconstitutional application and imposition of unreasonable and exorbitant bail after Plaintiffs or some of them had been arrested; for the sole purpose of effecting Plaintiffs' unlawful detention; thereby depriving Plaintiffs, or some of them of their liberty and property, without due process of law.

(c) Defendants Richarg J. Elrod, and the Defendant John J. Stamos, acting through his subordinates, as State's Attorney of Cook County, have threatened, and actually attempted to set in motion unlawful prosecutions of the Plaintiffs or some of them through the application to these Plaintiffs of the aforesaid statutes of the State of Illinois and ordinances of the City of Chicago, all of which are unconstitutional on their face and/or unconstitutional in their application to the Plaintiffs herein in furtherance of the above described detailed plan; said plan being calculated to deprive the Plaintiffs herein of their privileges, immunities and rights secured to them under the Constitution of the United States.

II. Jurisdiction of the Court.

22. The jurisdiction of the Court over the complaint arises under Title 28 U. S. C., Sections 1331, 1332, 1343(3) and (4), 2201, 2202, 2281 and 2284; Title 42 U. S. C., Sections 1981, 1983 and 1985, and the Constitution of the United States and more particularly, the First, Fourth, Fifth, Sixth, Eighth, Tenth, Thirteenth, Fourteenth and Fifteenth Amendments thereto.

23. The amount in controversy, exclusive of interest and costs, exceeds the sum or value of Ten Thousand Dollars ($10,000).

24. The Defendants herein, under color of certain statutes of the State of Illinois and certain ordinances of the City of Chicago have purposefully entered into a plan or scheme of concerted and joint action with and among themselves and with other persons some of whom are unknown to Plaintiffs, to subject or cause to be subjected the Plaintiffs, citizens of the United States, to the deprivation of rights, privileges and immunities secured to them by the Constitution and laws of the United States.

25. Pursuant to this plan or scheme the Defendants have attempted to threaten and to continue to attempt to prosecute the Plaintiffs and all persons associated with them or working in cooperation therewith under color and authority of certain statutes, namely, Ch. 38, Secs. 25 (a), (1), (2); Ch. 38, Sec. 31-1; Ch. 38-12-2; 12-4; 12-6; and certain ordinances of the City of Chicago, to-wit: Ch. 193-1 and Ch. 11-33. Said statutes and ordinances are set forth in an Appendix, marked Exhibit "A", and incorporated by reference herein.

26. Further, Defendants, or some of them without any basis, whatsoever in fact, and solely for the purpose of depriving Plaintiffs of their Federally protected rights attempted to institute the prosecution of the Plaintiffs and those associated with them or working in cooperation therewith by arresting certain of the Plaintiffs without any warrants of any kind, without probable cause. That upon so illegally and unconstitutionally arresting Plaintiffs, Defendants then charged Plaintiffs, or some of them, with violations of the aforesaid statutes, ordinances, or some of them.

27. Specifically, on or about the 1st day of August, 1967, Plaintiffs, Rommell Muller, Joseph H. Reynolds and David A. Reynolds, members of Sub-Class One, all being citizens of the United States of America, and residents of the City of Chicago, Illinois, and other citizens of the United States and residents of the City of Chicago, Illinois, did gather and lawfully and peaceably assemble in and upon the public streets of the City of Chicago, Illinois, and more specifically in and upon the sidewalks and public thoroughfares commonly known as 67th Street and Cottage Grove Avenue, Chicago, Illinois, to investigate and peacefully protest against the unlawful shooting and killing of one Julius Woods, a Negro citizen and resident of same community by a white person, not a resident of said community. The

Plaintiffs, and other members of the class, all residents of the City of Chicago, concerned with the shooting of Julius Woods, attempted to ascertain the facts surrounding his shooting and to exercise their First Amendment rights of free speech, assembly, and the right to petition for redress of grievances. These Plaintiffs individually, and other members of the same class while performing the above acts, were arrested pursuant to the aforesaid statutes and ordinances, or some of them, and all held on unreasonable, excessive and exorbitant bail, ranging from Ten Thousand Dollars ($10,000) to Fifty Thousand Dollars ($50,000).

28. On or about the 14th day of September, 1967, Plaintiffs Jerome Parker and Rudy Hooper, and other persons being Negro residents of the City of Chicago, Illinois, and citizens of the United States, did lawfully gather and peacefully assemble in and upon the public streets of the City of Chicago, and more particularly the sidewalk and public thoroughfares commonly known as 43rd Street and Langley Avenue, Chicago, Illinois, for the purpose of peacefully and lawfully demonstrating and protesting against the unlawful attack and brutal beating of an 18 year old Negro young woman who resided in said community, by police officers of the City of Chicago, which assault and brutal beating of the said 18 year old Negro young woman resulted in her hospitalization, and occurred on or about September 12, 1967. Said Plaintiffs, in so peacefully protesting and demonstrating, were attempting to exercise their First Amendment rights of free speech, assembly and the right to petition for redress and grievances. These Plaintiffs individually, and other members of the same class, while performing the above acts, were arrested pursuant to the aforesaid statutes and ordinances, or some of them, and all held on unreasonable, excessive and exorbitant bail, ranging from Ten Thousand Dollars ($10,000) to Fifty Thousand Dollars ($50,000).

29. On or about May 21, 1967, Plaintiff James Washington, a Negro resident of the City of Chicago, Illinois, and a citizen of the United States, and other Negro residents and citizens of the United States, similarly situated, did lawfully gather and peacefully assemble in and upon the public streets of the City of Chicago and more particularly the sidewalks and public thoroughfares commonly known as 51st Street and South Park Avenue, Chicago, Illinois; and within and upon the grounds of the public park located within the City of Chicago and commonly known as Washington Park; and plaintiff and said persons were so doing for the lawful purpose or urging that the said public park, or portion thereof be renamed in order that said people would be rendered more relevant in location and character to the predominant number of Negro residents who reside in the vicinity of said park, and in recognition of a member or members of their own ethnic group similar to the kind of recognition accorded other national and ethnic groups in other parts of the City of Chicago. In so doing Plaintiff and others were in the exercise of their First Amendment rights of free speech, assembly, and while performing the above acts, were arrested pursuant to the abovesaid statutes and ordinances, or some of them, and all held on unreasonable, excessive and exorbitant bail.

30. On or about August 23, 1967, Plaintiffs Arnold Ford, Vissa Marie Turner, Wysingo Turner, Andrew Brown, Charles Fletcher, James Jones, and Herman Townsend, all being members of Sub-Class Four, and Negro residents of the City of Chicago, Illinois, and citizens of the United States, and other Negro residents and citizens of the United States; similarly situated, did lawfully gather and peacefully assemble in and upon the public streets of the City of Chicago, and more particularly the sidewalks and public thoroughfares commonly known as 111th Street and Throop Avenue, Chicago, Illinois, to inquire, investigate and peace-

fully protest against the unlawful shooting of another Negro youth and resident of said community. The Plaintiffs and other members of the Class, concerned with the said shooting of another youth, and while so peacefully protesting and demonstrating against said shooting, were attempting to exercise their First Amendment rights of free speech, assembly and the right to petition for redress of grievances. The Plaintiffs individually, and other members of the same class while performing the above acts, were arrested pursuant to the aforesaid statutes, and ordinances or some of them and all held on unreasonable, excessive and exorbitant bail.

31. On or about August 4, 1967, Plaintiff, Frank Ditto, a Negro resident of the City of Chicago, Illinois, and a citizen of the United States, and other Negro residents and citizens of the United States similarly situated, did lawfully gather and peacefully assemble in and upon a certain playground located in the City of Chicago, Illinois at 3501 S. Wallace Street, Chicago, Illinois, and said Plaintiffs were lawfully and peacefully in and upon the premises of said public playground, for the lawful purpose of peacefully demonstrating and protesting against the lack and absence of adequate playground facilities in the south side community, in the City of Chicago where they, and their children, all being Negroes, resided. In so doing, plaintiff, Frank Ditto, and other persons similarly situated were attempting to exercise their First Amendment rights of free speech, assembly and while performing the above described lawful acts, were arrested by the Defendants, or some of them, and charged with violations of the above said statutes and ordinances, or some of them, and held on unreasonable, excessive and exorbitant bail.

32. That the arrests of Plaintiffs, or some of them, and threats or attempts to enforce the aforesaid mob violence and disorderly conduct statutes against Plaintiffs, are not

made by the Defendants with any expectation of securing valid convictions but rather are a part of a plan, conceived and implemented by Defendants to employ arrests, seizures of plaintiffs' persons, and their unlawful detention on unreasonable, excessive and exorbitant bail and threats of prosecution under color of the aforesaid statutes to harass Plaintiffs and discourage them and their supporters from asserting and attempting to vindicate the Constitutional rights, particularly of Negro citizens; and the particular tactic in the said plan or scheme, to-wit: the unlawful use of the Illinois Bail Statute, does result in the effective unlawful detention of these Plaintiffs, particularly the Negro residents of the City of Chicago named herein, and accordingly effectively deprives these Plaintiffs of their liberty and property without due process of law and deprives them of rights secured to them under the First, Eighth, and Fourteenth Amendments to the Constitution of the United States.

33. The provisions of Illinois Revised Statutes, Ch. 38, Sections 25-1(a), (1) (2) (3); Ch. 38, Sec. 31-1; Ch. 38, Sec. 12-2; 12-4 and 12-6, and the said ordinances of the City of Chicago, Ch. 193-1 and Ch. 11-33 (Exhibit "A"), are void and illegal on their face and as applied to the Plaintiffs herein, in that, they violate the Constitution of the United States and in particular the First, Fourth, Fifth, Sixth, Ninth, Tenth, Thirteenth, Fourteenth and Fifteenth Amendments thereto. These statutes and ordinances violate the fundamental guarantees of free speech, press, assembly, and the right to petition the government for redress of grievances. They violate the guarantee of due process by law in that they are vague and indefinite and fail to meet the requirements of certainty in criminal statutes. Statutes and ordinances, or some of them, such as are complained of herein, and in particular, Ill. Rev. Stats., Ch. 38, Sections 25-1 (a), (1)(2) and Chicago Ordinance Ch. 193-1,

have been held unconstitutional on their face by other Federal courts, including the Supreme Court of the United States.

34. Pursuant to the aforesaid plan or scheme Defendants have threatened and continue to threaten to enforce the said unconstitutional, void, and illegal statutes and ordinances against the Plaintiffs herein for the sole purpose of harassing, intimidating, subjecting and causing to be subjected Plaintiffs and their members, friends and supporters to the deprivation of rights, privileges, and immunities secured to them by the Constitution and laws of the United States and, in particular, those guaranteed by the First Amendment.

35. The vast majority of Negro citizens of the City of Chicago, Illinois, and their supporters and friends are law-abiding persons who nevertheless have serious complaints against the administration of justice and the administration of the laws, as herein complained of, their economic deprivation, and the inadequacy of numerous public services relating to schools, housing, and other grievances. The impact of the unconstitutional prosecutions complained of herein, is designed to and has the effect of deterring the Negro community in particular, and their friends and supporters from engaging in an area of activity which is constitutionally protected, because they are fearful of becoming the victims of the unconstitutional and discriminatory law and law enforcement and prosecutive program hereinabove described conducted by the Defendants; and therefore Defendants' conduct has the effect of creating a chill upon the exercise of their rights protected under the First and Fourteenth Amendments of the Constitution of the United States.

36. The prosecution of any Plaintiffs herein will have destructive, harassing and intimidating and chilling ef-

fects upon Federal rights described above and in particular those guaranteed by the First Amendment not only of the Plaintiffs who would in fact be prosecuted, but upon the rights of every member of the classes who are parties hereto and represented by Plaintiffs.

37. The same chilling effects on First Amendment rights will result from trials of Plaintiffs even though they may be ultimately acquitted. Every day that the said charges remain pending against Plaintiffs, irreparable injury is being done the Plaintiffs in that:

(a) Plaintiffs are deterred by fear of possible initial conviction of these charges, or of the filing of additional charges, from vigorously pursuing their lawful activities as described above.

(b) Plaintiffs who were not charged with violations of the above-described statutes and ordinances are deterred by fear of possible initial convictions on these charges, or of the filing of additional charges, from vigorously pursuing their First Amendment rights to speak out against racial injustice.

(c) Numerous persons, members of the various subclasses of Plaintiffs named herein, and friends and supporters of the Plaintiffs have been arrested, as were some of the Plaintiffs, and arising out of the same circumstances herein alleged, and because of their impoverished circumstances were unable to make the exorbitant and unlawful bail. Accordingly, to achieve their liberty and to obtain relief from unlawful detention, they were required to accede to offers, submitted by the Defendants to plead guilty to the charges or face probable conviction and further detention.

(d) Certain Plaintiffs who were able to make excessive bail, were thereby deprived of funds and property without due process of law.

(e) Certain plaintiffs, not being able to make exorbitant and unlawful bail were thereby deprived of the right to adequate and competent counsel; the right to secure the presence of witnesses for their trials and the opportunity to prepare an adequate defense.

(f) Members of this class who were not charged with any violations of statutes or ordinances are deterred by fear of possible charges being placed against them for seeking to peacefully exercise their said First Amendment rights.

38. Accordingly, unless this Court restrains the operation and enforcement of these void, invalid, and unconstitutional state statutes, laws and city ordinances, plaintiffs, and members, friends and supporters will continue to suffer the most serious, immediate and irreparable injury in that they will continue to be deterred, intimidated, hindered and prevented from exercising their most elementary and fundamental federal constitutional rights.

39. Plaintiffs have no adequate remedy at law.

WHEREFORE, plaintiffs pray for the following relief:

1. That pursuant to Title 28 U. S. C., 2281 and 2284, a three-judge Federal District Court be immediately convened to hear and determine this proceeding.

2. That a permanent injunction issued without bond; and that bond be expressly waived.

(a) restraining the defendants, their agents and attorneys from the enforcement, operation or execution of any of the statutes of the State of Illinois, and ordinances of the City of Chicago complained of herein.

(b) restraining the defendants, their agents, and attorneys from impeding, intimidating, hindering, and preventing plaintiffs or members, friends and supporters of ACT from exercising the rights, privileges and immunities

guaranteed to them by the Constitution and laws of the United States;

(c) restraining the defendants, their agents, and attorneys from setting unreasonable and exorbitant bail.

3. That a declaratory judgment issue declaring that Ill. Rev. Stats., Ch. 38, sec. 25-1(a)(1)(2) and (3); Ch. 38, sec. 31-1; Ch. 38, sec. 12-2; 12-4 and 12-6; and Ch. 193-1 and Ch. 11-33 of the ordinances of the City of Chicago, are void on their face, null and void as violative of the Constitution of the United States, and/or as applied to the conduct of the plaintiffs herein.

4. That, pending the hearing and determination of the prayers for permanent relief, an interlocutory injunction issue restraining the defendants, their agents, attorneys and all others acting in concert with them from enforcing in any way the provisions of the statutes and ordinances set forth in 3 above; or from instituting or undertaking any proceedings whatsoever pursuant to said statutes and ordinances against the plaintiffs, their members, friends and supporters, herein.

5. For any and all other relief which this Court may see fit to grant. Plaintiffs respectfully pray that the above relief be granted.

Robert L. Tucker,
30 North La Salle Street
Chicago, Illinois 60602
236-8624

R. Eugene Pincham
12 West Garfield Boulevard
Chicago, Illinois 60609
DR 3-3600

Kermit Coleman
72 East 47th Street
Chicago, Illinois 60650

Jean F. Williams
366 East 47th Street
Chicago, Illinois 60650
BO 8-6450

Ellis E. Reid
123 West Madison Street
Chicago, Illinois 60602
FR 2-1106

Lawrence E. Kennon
6 East Garfield Boulevard
Chicago, Illinois 60615
KE 8-5975

Leonard Karlin
173 West Madison Street
Chicago, Illinois 60602
AN 3-4735

Norman E. Lapping
33 North LaSalle Street
Chicago, Illinois 60602
RA 6-7733

Irving Birnbaum
11 South LaSalle Street
Chicago, Illinois 60602
DE 2-0551

Leo E. Holt
166 West Washington Street
Chicago, Illinois 60602
AN 3-6054

Cecil C. Butler
116 South Michigan Avenue
Chicago, Illinois 60603
726-0157

Edward Thompson
116 South Michigan Avenue
Chicago, Illinois 60603
726-0157

Dennis J. Roberts
116 Market Street
Newark, New Jersey 07102
201-622-1467

William M. Kunstler and
Arthur Kinoy
511 Fifth Avenue
New York, New York 10017
212-MU 2-8317

EXHIBIT A.

Appendix.

Statutes and Ordinances Challenged Herein.

Ill. Rev. Stats., Ch. 38, § 25-1. Mob Action.

(a) Mob action consists of any of the following:

(1) The use of force or violence disturbing the public peace by 2 or more persons acting together and without authority of law; or

(2) The assembly of 2 or more persons to do an unlawful act; or

(3) the assembly of 2 or more persons, without authority of law, for the purpose of doing violence to the person or property of any one supposed to have been guilty of a violation of the law, or for the purpose of exercising correctional powers or regulative powers over any person by violence.

(b) Any person engaged in mob action shall be fined not to exceed $500 or imprisoned in a penal institution other than the penitentiary not to exceed 30 days, or both.

(c) Any participant in a mob action which shall by violence inflict injury to the person or property of another shall be fined not to exceed $1,000 or imprisoned in a penal institution other than the penitentiary not to exceed one year, or in the penitentiary from one to 5 years, or both fined and imprisoned.

(d) Any participant in a mob action who does not with draw on being commanded to do so by any peace officers shall be fined not to exceed $500 or imprisoned in a penal institution other than the penitentiary not to exceed one year, or both.

Ill. Rev. Stats., Ch. 38, § 31-1. Resisting or Obstructing a Peace Officer.

A person who knowingly resists or obstructs the performance by one known to the person to be a peace officer

of any authorized act within his official capacity shall be fined not to exceed $500 or imprisoned in a penal institution other than the penitentiary not to exceed one year, or both.

Ill. Rev. Stats., Ch. 38, § 12-4(a)(5). Aggravated Battery.

(a) A person who, in committing a battery, intentionally or knowingly causes great bodily harm, or permanent disability or disfigurement commits aggravated battery and shall be imprisoned in a penal institution other than the penitentiary not to exceed one year or in the penitentiary from one to 10 years.

(5) Knows the individual harmed to be a peace officer, or a person summoned and directed by him, while such officer is engaged in the execution of any of his official duties including arrest or attempted arrest; commits aggravated battery and shall be imprisoned in a penal institution other than the penitentiary not to exceed one year or in the penitentiary from one to 5 years.

Ill. Rev. Stats., Ch. 38, § 12-6(a)(6). Intimidation.

(a) A person commits intimidation when, with intent to cause another to perform or to omit the performance of any act, he communicates to another a threat to perform without lawful authority any of the following acts:

(6) Take action as a public official against anyone or anything, or withhold official action, or cause such action or withholding; or

Caption 193.

Public Peace and Welfare.

General regulations.

193– 1. Disorderly conduct
193– 1.1. Inciting riots, etc.
193– 1.2. Drinking in public ways
193– 1.3. Defacing and injuring house of worship and cemeteries
193– 2. Disorderly houses
193– 3. Vagrancy
193– 4. Disturbing places of worship
193– 5. Damage to public property
193– 6. Injuring or obstructing signal systems
193– 6.1. Use of sirens
193– 7. False fire alarms
193– 7.1. Passing police lines
193– 7.2. Press cards
193– 7.3. Application
193– 7.4. Advisory committee
193– 7.5. Form of press card
193– 7.6. City seal
193– 7.7. Revocation
193– 7.8. Penalty
193– 7.9. Smoking in stores and elevators
193– 7.10. Smoking in public conveyances
193– 8. Bonfires
193– 9. Masking in public
193-10. Possessing burglar's tools
193–11. Hatpin with point exposed
193–12. Throwing objects on athletic fields
193–13. Objects on sills or railings
193–14. Spikes in railings and fences
193–15. Clay holes and excavations
193–16. Carrying or exhibiting flags
193–17. Rag picking
193–18. Trespassing on property
193–19. Trespassing on elevated track
193–20. Advertising and signs on buildings
193–21. Removing sod or earth

193–22. Spiritualism and fortune telling
193–23. Forging signatures
193–24. Deceptive advertising
193–25. Advertising psychic or magical powers
193–26. Bagatelle and pigeonhole
193–27. Charitable entertainments
193–28. Promotion of marriage

Firearms and other weapons
193–29. Discharging firearms
193–30. Carrying dangerous weapons
193–31. Discharging toy firearms
193–32. Hunting

Official time
193–33. Designation
193–34. Change of city clocks

Violation of chapter provisions
193–35. Penalty

Disorderly conduct

193– 1. All persons who shall make, aid, countenance, or assist in making any improper noise, riot, disturbance, breach of the peace, or diversion tending to a breach of the peace, within the limits of the city; all persons who shall collect in bodies or crowds for unlawful purposes, or for any purpose to the annoyance or disturbance of other persons; all persons who are idle or dissolute and go about begging; all persons who use or exercise any juggling or other unlawful games or plays; all persons who are found in houses of ill-fame or gaming houses, all persons lodging in or found at any time in sheds, barns, stables, or unoccupied buildings, or lodging in the open air and not giving a good account of themselves; all persons who shall wilfully assault another in the city, or be engaged in, aid, or abet in any fight, quarrel, or other disturbance in the city; all persons who stand, loiter, or stroll about in any place in the city, waiting or seeking to obtain money or other valuable things from others by trick or fraud, or to aid or assist therein; all persons that shall engage in any fraudulent scheme, device, or trick to obtain money or other valuable thing in any place in the city, or who shall aid, abet or in any manner be concerned therein; all touts,

ropers, steerers, or cappers, so called, for any gambling room or house who shall ply or attempt to ply their calling on any public way in the city, all persons found loitering about any hotel, block, barroom, dramshop, gambling house, or disorderly house, or wandering about the streets either by night or day without any known lawful means of support, or without being able to give a satisfactory account of themselves; all persons who shall have or carry any pistol, knife, dirk, knuckles, slingshot, or other dangerous weapon concealed on or about their persons; and all persons who are known to be narcotic addicts, thieves, burglars, pickpockets, robbers or confidence men, either by their own confession or otherwise, or by having been convicted of larceny, burglarly, or other crime against the laws of the state, who are found lounging in, prowling or loitering around any steamboat landing, railroad depot, banking institution, place of public amusement, auction room, hotel, store, shop, public way, public conveyance, public gathering, public assembly, court room, public building, private dwelling house, house of ill-fame, gambling house, or any public place, and who are unable to give a reasonable excuse for being so found, shall be deemed guilty of disorderly conduct, and upon conviction thereof, shall be severally fined not less than one dollar nor more than two hundred dollars for each offense. [Amend. Coun. J. 5-24-51. p. 312.]

Inciting riots, etc.

193-1.1. It is unlawful to create a clear and present danger of a riot or assault, battery, or other unlawful trespass against any person or group of persons because of his or their race, religion, color, national origin, or ancestry, or to create a clear and present danger of arson, vandalism, defacement, or other unlawful trespass against property because of the race, religion, color, national origin, or ancestry of the owner, possessor, or authorized user or users of said property, or, in the case of a cemetery, of the decedent buried therein.

The term "person" as used in this section shall include one or more individuals, co-partnerships, corporations, firms, organizations, associations, leagues, or other bodies.

Any person violating the provisions of this section shall be fined not less than twenty-five dollars nor more than two hundred dollars or imprisonment for not less than ten days or more than six months, or both, for each offense. [Added Coun. J. 9-10-47, p. 881.]

Drinking in public

193-1.2. (a) It shall be unlawful for any person to drink any alcoholic liquor as defined by law on any public way or in or about any motor vehicle upon a public way in the city.

(b) It shall be unlawful for any person to transport, carry, possess or have any alcoholic liquor in or upon or about any motor vehicle upon any public way in the city except in the original package and with the seal unbroken.

(c) Any person violating any provision of this section shall be fined not less than fifty dollars nor more than two hundred dollars, or shall be punished by imprisonment for a period of six months, or by both such fine and imprisonment. [Passed. Coun. J. 12-10-53, p. 6226; amend. 11-28-56, p. 3563.]

Defacing and injuring house of worship and cemeteries.

193-1.3. Any person who wilfully defaces, mars, injures, destroys or removes any vault, tomb, monument, gravestone, memorial of the dead, church, synagogue, or any other structure constituting a place of worship of any religion, sect or group, or any part of any contents thereof, or any fence, tree, shrub or plant appurtenant thereto, shall be fined not less than twenty-five dollars nor more than two hundred dollars, or imprisoned for not more than six months, or both such fine and imprisonment, for each offense. Each such act of marring, injuring, destroying or removal shall constitute a separate offense. [Passed. Coun. J. 1-20-60, p. 2048.]

Disorderly houses.

193-2. Every common, ill-governed, or disorderly house, room, or other premises kept from the encouragement of idleness, gaming, drinking, fornication, or other misbehavior, is hereby declared to be a public nuisance, and the keeper and all persons connected with the maintenance

thereof, and all persons patronizing or frequenting the same, shall be fined not exceeding two hundred dollars for each offense.

Vagrancy.

193-3. All persons who are idle and dissolute, or who go about begging; all persons who use any shell game, sleight-of-hand or juggling trick, or other unlawful game to cheat, defraud, or unlawfully obtain money or other valuable thing; pilferers; confidence men; common drunkards; common night walkers; persons lewd, wanton, or lascivious in speech or behavior; common brawlers; persons who are habitually neglectful of their employment or their calling, and do not lawfully provide for themselves or for the support of their families; and all persons who are idle or dissolute and who neglect all lawful business, and who habitually misspend their time by frequenting houses of ill-fame or gaming houses; all persons lodging in or found in the night time in sheds, barns, or unoccupied buildings or lodging in the open air, and not giving a good account of themselves; and all persons who are known to be thieves, burglars, or pickpockets, either by their own confession or otherwise, or by having been convicted of larceny, burglary, or other crime against the laws of the state punishable by imprisonment in the state prison or in a house of correction of any city, and having no lawful means of support, are habitually found prowling around any steamboat landing, railroad depot, banking institution, broker's office, place of public amusement, auction room, store, shop, or crowded public way, public conveyance, or at any public gathering or assembly, or lounging about any court room, private dwelling houses, or are found in any house of ill-fame or gambling house, are hereby declared to be vagabonds, and shall be fined not to exceed one hundred dollars for each offense. [Amend. Coun. J. 12-21-39, p. 1396.]

Disturbing places of worship.

193-4. Any person who shall disquiet or disturb any congregation or assembly met for religious worship by making a noise, or by rude and indecent behavior or profane discourse within the place of worship, or so near to the same as to disturb the order and solemnity of the meeting, shall be fined not exceeding fifty dollars for each offense.

IN THE UNITED STATES DISTRICT COURT.

(Title omitted in printing.)

MOTION TO STRIKE AND DISMISS, AND IN OPPOSITION TO THE ENTERING OF A TEMPORARY INJUNCTION AND THE CONVENING OF A THREE JUDGE COURT.

Now come certain defendants, John S. Boyle, Chief Judge of the Circuit Court of Cook County, Illinois; John J. Stamos, State's Attorney of Cook County, Illinois; Joseph I. Woods, Sheriff of Cook County; Maurice W. Lee, Magistrate, Circuit Court of Cook County, Illinois; and John J. Limperis, Magistrate, Circuit Court of Cook County, Illinois; by their attorney John J. Stamos, State's Attorney of Cook County, Illinois, and respectfully moves this Court to Strike and dismiss the above entitled cause and to deny plaintiff's Motion For a Temporary Injunction and the Convening of a Three Judge Court for the following reasons:

1. This Court has no jurisdiction over the matters presented.

2. As to those plaintiffs who are involved in pending criminal proceedings in the courts of the State of Illinois, this Court is barred from entering an injunction against the defendants by Title 28, Sec. 2283, U. S. Code. Such provision is applicable to stay State Court proceedings only when (a) an act of Congress so determines; (b) In aid of the federal court's jurisdiction, or (c) when a federal court judgment or decree is to be protected, none of which exceptions are here applicable.

3. As to those plaintiffs not involved in pending criminal cases in the State of Illinois, the allegations of the

complaint do not state a claim upon which relief can be granted in this Court.

4. As regards all plaintiffs in the above entitled cause, no claim is presented upon which relief can be granted in this Court.

5. That the complaint states insufficient allegations under Tit. 42, Secs. 1981, 1983 and 1985 to grant relief to plaintiffs.

6. The doctrine of abstention is applicable and should be utilized in this proceeding to allow the State courts of Illinois maximum responsibility in the areas particularly within their competence.

7. The provisions of Tit. 42, Sec. 1985 have not been sufficiently pleaded by plaintiff to allege the necessary prerequisites of a conspiracy to deny plaintiffs' equal protection under the laws.

8. The allegations of plaintiff's complaint do not sufficiently show or justify irreparable injury, should this Court abstain and allow the State courts of Illinois to fully determine the issues set forth in said complaint.

9. The defendants contend that plaintiffs have an adequate remedy at law. Specifically, the claim raised herein can be asserted in the State Court proceeding now pending and the Courts of the State of Illinois under the Supremacy Clause of the federal constitution are duly bound to adjudicate those alleged constitutional assertions.

10. Insofar as the application of the challenged criminal statutes of the State of Illinois, as well as the criminal statute of any state, may impinge upon the First Amendment Rights of any plaintiff already arrested as well as those not presently subjected to criminal proceedings, these are matters which constitute a defense to a criminal action and properly should be brought in the state court

proceeding unless this Court is prepared to conduct actual trials in each instance on the state issues.

11. With reference to those purported claims raised by plaintiffs involving the 4th, 5th, 6th, 8th, 9th, 10th, 13th and 15th Amendments to the United States Constitution plaintiff makes no specific allegation of facts as to the applicability of these Amendments to their purported claim or fails to demonstrate the manner in which said Amendments apply to allegedly void the particular statutes on their face.

12. As regards plaintiffs' claim that these statutes in question are unconstitutional on its face in that they purportedly violate plaintiffs' due process of law, relating to vagueness and indefiniteness, defendants state that these statutes in question are valid regulations and precise, narrowly drawn regulatory statutes which prescribe certain specific behavior and prohibit a particular type of conduct; as to plaintiffs' claim that such statutes on due process grounds, are unconstitutional as they are applied, this claim is premature in that the State Courts of Illinois, in which certain of these matters are pending, have not yet ruled as to the precise applicability of these statutes as to plaintiffs. As to those plaintiffs without matters pending in the State Court, there are no facts alleged showing a threatened state application of these statutes to those plaintiffs.

13. As regards plaintiffs' claim that the statutes in question are unconstitutional on its face in that they purportedly violate plaintiffs' First Amendment rights, defendants state that the statutes in question are valid regulations and precise, narrowly drawn regulatory statutes which prescribe certain specific behavior and prohibit a particular type of conduct; as to plaintiffs' claim that such statutes, on first amendment grounds, are unconstitutional as they are applied, this claim is premature in that the

State Courts of Illinois in which certain of these matters are pending, have not ruled as to precise applicability of these statutes as to plaintiffs who have pending proceedings; as to those plaintiffs without matters pending in the State Court, there are no facts alleged showing a threatened state application of these statutes to those plaintiffs.

JOHN J. STAMOS,
State's Attorney of Cook County, Illinois,
Attorney for certain defendants.

By: EDWARD J. HLADIS,
Chief of Civil Division,

RONALD BUTLER,
DEAN H. BILTON,
Assistant State's Attorneys.

(Affidavit omitted in printing.)

UNITED STATES DISTRICT COURT.

Northern District of Illinois,

Eastern Division.

LAWRENCE LANDRY, ROMMELL MULLER, JOSEPH H. REYNOLDS, DAVID A. REYNOLDS, JAMES WASHINGTON, FRANK DITTO, ROBERT LUCAS, ROBERT BROWN, MICHAEL ROGERS, BERNARD HUGHES, ARNOLD FORD, VISSA MARIE TURNER, WYSINGO TURNER, ANDREW BROWN, CHARLES FLETCHER, JAMES JONES, HERMAN TOWNSEND, JEROME PARKER, RUDY HOOPER, and ACT, an unincorporated association,

Plaintiffs,

vs.

RICHARD J. DALEY, Mayor of the City of Chicago, Cook County, Illinois; JAMES CONLISK, Superintendent of Police of the City of Chicago, Illinois; JOHN S. BOYLE, Chief Judge of the Circuit Court of Cook County, Illinois; JOHN J. STAMOS, State's Attorney of Cook County, Illinois; RAYMOND F. SIMON, Corporation Counsel of the City of Chicago, Illinois; JOSEPH I. WOODS, Sheriff of Cook County, Illinois; RICHARD J. ELROD, Assistant Corporation Counsel, City of Chicago, Division of Ordinance Enforcement; MAURICE W. LEE, Magistrate, Circuit Court of Cook County, Illinois; JOHN S. LIMPERIS, Magistrate, Circuit Court of Cook County, Illinois; JOHN T. BURKE, JOSEPH RATKVICH and ROBERT KULOVITZ, Police Officers of the City of Chicago,

Defendants.

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OPINION.

This is a class action, brought by the plaintiffs pursuant to Rule 23(a)(1)(3) of the Federal Rules of Civil Procedure on their own behalf and on behalf of all others similarly situated, seeking declaratory and injunctive relief. Some of the individual plaintiffs are negro citizens who currently face criminal prosecution before the Circuit Court of Cook County, Illinois. These prosecutions arose out of a series of demonstrations taking place in Chicago, Illinois. Plaintiff, ACT, is an unincorporated association, maintaining offices in Chicago, Illinois, among the purposes of which is to secure negro citizens their federal rights and to end all forms of racial segregation and discrimination. To obtain these objectives, it engages in a variety of protest activities, including picketing, demonstrations, rallies, mass meetings, voter registration drives, community organization and publication. Plaintiffs, Lawrence Landry, Robert Lucas, Robert Brown and Michael Rogers are negroes and sue as representatives of the class of all negroes in the City of Chicago. Defendants are either officers of the City of Chicago, Illinois, or officers of the State of Illinois.

It is asserted that the jurisdiction of the Court over the Complaint arises under Title 28 U. S. C., Sections 1331, 1332, 1343(3), (4), 2201, 2202, 2281 and 2284; Title 42 U. S. C., Sections 1981, 1983 and 1985; and the Constitution of the United States, particularly, the First, Fourth, Fifth, Sixth, Eighth, Tenth, Thirteenth, Fourteenth and Fifteenth Amendments thereto.

The complaint alleges that the defendants have purposefully entered into a plan or scheme of concerted and joint action among themselves and with other persons unknown to the plaintiffs to deprive the plaintiffs of rights, privi-

leges and immunities secured to them by the Constitution and laws of the United States. Pursuant to this plan, the defendants have allegedly prosecuted and threatened to prosecute the plaintiffs and other members of the class they represent under color and authority of certain statutes of the state of Illinois and certain ordinances of the City of Chicago. It is alleged that certain plaintiffs and those they represent have been arrested without any warrants of any kind or probable cause while peacefully demonstrating, that prosecutions based on these statutes and ordinances have been instituted against these plaintiffs, and that they have been held on unreasonable and exorbitant bail. The complaint asserts that these arrests and prosecutions, as well as threats of future enforcement of the statutes and ordinances, have not been made by defendants with any expectation of securing valid convictions, but rather are part of a plan to employ arrest, detention on excessive bail and threats of prosecution to harass plaintiffs and their supporters and discourage them from asserting and exercising their federal rights.

The complaint also alleges that the state statutes and city ordinances under which this plan or scheme has been effectuated are unconstitutional on their face.[1] It is contended that these statutes and ordinances are vague and indefinite; they permit a construction which would violate plaintiffs' First Amendment guarantees as well as due process of law.

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1. The state statutes in question are: Ill. Rev. Stat. Ch. 38, § 25-1 (Proscribing "Mob Violence"); Ill. Rev. Stat., Ch. 38, § 31-1 (Proscribing "Resisting or Obstructing a Peace Officer"); Ill. Rev. Stat., Ch. 38, § 12-2 (Proscribing "Aggravated Assault"); Ill. Rev. Stat., Ch. 38, § 12-4(a)(5) (Proscribing "Aggravated Battery"); Ill. Rev. Stat., Ch. 38, § 12-6(a)(6) (Proscribing "Intimidation").

The city ordinances in question are: Municipal Code of Chicago, Ch. 11, § 33 (Proscribing "Obstructing or Resisting a Police Officer"); Municipal Code of Chicago, Ch. 193, § 1 (Proscribing "Disorderly Conduct").

It is asserted that the impact of the plan allegedly conceived and implemented by the defendants and the possibility of prosecution under these statutes and ordinances is to discourage and inhibit the lawful exercise by the plaintiffs and the class which they represent of freedom of expression, freedom of assembly, and the right to petition government for redress of grievances.

On the basis of these allegations, the plaintiffs seek: (1) the issuance of declaratory judgments declaring that the state statutes and city ordinances in question are void on their face, null and void as violative of the Constitution of the United States, and/or as applied to the conduct of the plaintiffs herein, (2) the issuance of a permanent injunction restraining the defendants, their agents, and attorneys from the enforcement, operation, or execution of any of these statutes and ordinances, and (3) the issuance of a permanent injunction restraining the defendants, their agents, and attorneys from impeding, intimidating, hindering, and preventing plaintiffs, or members and supporters of ACT from exercising the rights, privileges, and immunities guaranteed to them by the Constitution and laws of the United States. The plaintiffs also move that a three-judge court be convened pursuant to Section 2281 and 2284, Title 28, of the United States Code to hear and determine the issues presented herein. Pending a hearing and determination by a three-judge court, plaintiffs seek the issuance of a temporary injunction restraining the defendants, their agents, attorneys and all others acting in concert with them from enforcing in any way the provisions of the statutes and ordinances in question or from instituting or undertaking any proceedings whatsoever pursuant to these statutes and ordinances.[2]

2. Pending further action by this court or a three-judge court, the defendants have informally agreed, and the plaintiffs have accepted this agreement, that all pending prosecutions for acts of plaintiffs prior to the filing of this suit will be held in status quo.

Pursuant to Rule 12 of the Federal Rules of Civil Procedure, both the state and city defendants have moved to dismiss this action. Defendants present omnibus motions. They assert, inter alia, the following grounds: (1) this Court has no jurisdiction over the matters presented; (2) the complaint states insufficient allegations to grant relief to plaintiffs; (3) the complaint fails to state a claim upon which relief can be granted; (4) the complaint does not disclose irreparable injury or harm of such a nature as to justify equitable relief; (5) the plaintiffs have an adequate remedy at law since their constitutional claims may be asserted in the proceedings now pending in the state courts; (6) the doctrine of federal abstention is applicable and should be utilized in this proceeding to allow the state courts of Illinois an opportunity to adjudicate the areas within their particular competence; (7) this Court is barred by Title 28, United States Code, Section 2283, from entering an injunction against the defendants in regard to those criminal proceedings currently pending in the Illinois state courts, and (8) the complaint makes no specific factual allegations as to the applicability of the Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, Thirteenth and Fifteenth Amendments and fails to demonstrate the manner in which these amendments apply so as to void the statutes and ordinances in question.

The Scope of the Present Inquiry.

The plaintiffs seek to have a three-judge court convened pursuant to Sections 2281 and 2284, Title 28, of the United States Code to determine the constitutional questions raised in the complaint. Section 2281 provides as follows:

> An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such

> statute . . . shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges under § 2284 of this Title.

The purpose of this section is to provide procedural protection against the improvident invalidation of state legislation by a single federal judge.[3] It assures the collective judgment of three federal judges whenever a plaintiff seeks to enjoin a state regulatory scheme upon constitutional grounds. Concomitant to this collective judgment is the provision of a direct appeal to the Supreme Court.[4] Accordingly, whenever an application for such relief is addressed to a district court, a single judge's inquiry is limited to whether it is appropriate to convene a three-judge court.

The rule established by the early cases dealing with the powers of a single judge when such injunctive relief was sought was that a single judge could not dismiss such an action on the merits.[5] This doctrine was qualified, however, by the Supreme Court in the case of *Ex parte Poresky*, 290 U. S. 30 (1934), where it was held that a single judge could dismiss the action for want of jurisdiction and that such jurisdiction was lacking if the federal constitutional claim was insubstantial.[6] Although it was recognized in *Poresky* that a single judge could examine the

3. *Moody* v. *Flowers*, 387 U. S. 97, 100 (1967); *Bartlett & Co.* v. *State Corp. Commission of Kansas*, 223 F. Supp. 975, 978 (Kan. 1963); *Voege* v. *American Sumatra Tobacco Corp.*, 192 F. Supp. 689, 691 (Del. 1961).

4. *See* 28 U. S. C. § 1253.

5. *See ex parte Northern Pacific R. R. Co.*, 280 U. S. 142 (1929); *Ex parte Metropolitan Water Co. of West Virginia*, 220 U. S. 539 (1911); Wright, Federal Courts § 50, at 165 (1963).

6. Noted in 47 Harv. L. Rev. 707; 28 Ill. L. Rev. 839 (1934); 18 Minn. L. Rev. 729. A constitutional claim was deemed insubstantial if it was obviously without merit or if its unsoundness was demonstrated by previous decisions of the Supreme Court. *California Water Service Co.* v. *City of Redding*, 304 U. S. 252, 255 (1939).

substance of a constitutional question before the convening of a three-judge court, the earlier rule has continued to have its influence. Title 28, United States Code, Section 2284(5), currently provides that a single judge "shall not . . . dismiss the action or enter a summary or final judgment." This language was added to the three-judge court act in 1947[7] and would seem to suggest a codification of the earlier rule.[8] Nevertheless, decisions subsequent to this amendment to the act indicate that while a single judge's authority is circumscribed, it is not so limited as this language would seem to suggest.[9]

The most recent Supreme Court decision involving this question is *Idlewild Bon Voyage Liquor Corp.* v. *Epstein*, 370 U. S. 713 (1961). In *Idlewild* the Court indicated that a single judge's inquiry "is appropriately limited to whether the constitutional question raised is substantial, whether the complaint at least formally alleges a basis for equitable relief, and whether the case presented otherwise comes within the requirements of the three-judge statute." *Id.* at 715. If those criteria are met, it is "impermissible for a single judge to decide the merits of the case, either by granting or by withholding relief." *Id.* at 715. This would seem to represent the present limits of a single judge's power when an application for a three-judge court is addressed to a district court. See *Stamler*

7. Act of April 6, 1942, c. 210, 56 Stat. 199.

8. Wright, Federal Courts, § 51, at 165-66 (1963); Note, 28 Minn. L. Rev. 131 (1944); Note, 62 Harv. L. Rev. 1398 (1949).

9. *See, e.g., Eastern States Petroleum Corp.* v. *Rogers*, 265 F. 2d 593 (D. C. Cir.), *mandamus denied*, 361 U. S. 805 (1959); *Carrigan* v. *Sunland-Tujanga Tel. Co.*, 263 F. 2d 568 (9th Cir. 1959); *Klein* v. *Lee*, 254 F. 2d 188 (7th Cir. 1958). Although these courts seem to have applied the rule announced in *Ex parte Poresky*, 290 U. S. 30 (1934), without thoroughly considering the effect of 28 U. S. C. § 2284(5), this course seems to have been approved by the Supreme Court. See *Turner* v. *City of Memphis*, 369 U. S. 350, 352-53 (1962); *Bailey* v. *Peterson*, 369 U. S. 31 (1962). *See, also*, Wright, Federal Courts § 51, at 166 (1963).

v. *Willis*, 371 F. 2d 413, 414 (7th Cir. 1966); *Pierce* v. *Jordan*, 333 F. 2d 951, 957 (10th Cir.), *cert. denied*, 379 U. S. 974 (1954), *rehearing denied*, 380 U. S. 927 (1965).

It seems clear, therefore, that at the present time this Court does not have the power to dismiss the instant action unless it fails to meet the criteria specified in *Idlewild* or the general requisites of federal jurisdiction.[10]

THE REQUISITES OF FEDERAL JURISDICTION.

The plaintiffs seek to invoke the jurisdiction of this Court under a number of jurisdictional statutes. Among them are sections 1331 and 1343 of Title 28, United States Code, Sec. 1331 provides that federal courts shall have general original jurisdiction over cases "arising under" the constitution, laws and treaties of the United States, while section 1343 provides that the federal courts shall have original jurisdiction over cases seeking relief for certain specified wrongs.

The plaintiffs' claims are based on the construction and effect of various federal laws and certain Amendments to the Constitution of the United States. This would seem to satisfy any common sense approach to the meaning of the phrase "arising under" in section 1331. See *Gully* v. *First National Bank in Meridian*, 299 U. S. 109 (1936). Moreover, the plaintiffs seek redress for wrongs specified in section 1343. Therefore, the jurisdictional requisites for purposes of both sections 1331 and 1343 are satisfied.

10. It is clear that a single judge, where a three-judge court is requested, may consider whether the cause comes within the requisite of federal jurisdiction in an appropriate case. See *Lion Mfg. Corp.* v. *Kennedy*, 330 F. 2d 833 (D. C. Cir. 1964).

SUBSTANTIAL FEDERAL QUESTION.

Even though an injunction is requested on the basis of the unconstitutionality of a state statute, a district judge need not convene a three-judge district court if the constitutional question presented in the complaint is wholly insubstantial.[11] This lack of substantiality might appear either because the constitutional question is obviously without merit or because its unsoundness is so clearly demonstrated by previous decisions of the Supreme Court as to foreclose the subject.[12]

As previously stated, the complaint alleges that certain state statutes and city ordinances are unconstitutional on their face.[13] Although the defendants have cited decisions by the Supreme Court of Illinois upholding the constitutionality of some of the challenged statutes and ordinances, these decisions alone would not foreclose an examination of the constitutionality of these statutes and ordinances. Moreover, the complaint also alleges that the statutes and ordinances in question have been unconstitutionally applied to the plaintiffs as part of a plan or scheme to deprive them of their constitutional rights. When viewed in this context, it is difficult to see how the constitutional questions raised can be deemed insubstantial.

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11. *E.g., Ex parte Poresky*, 290 U. S. 30 (1934); *Powell* v. *Workman's Compensation Bd. of State of New York*, 327 F. 2d 131, 138 (2d Cir. 1964); *Benoit* v. *Gardner*, 241 F. Supp. 206, 207 (Mass. 1965); *United States ex rel. Horne* v. *Pennsylvania Bd. of Parole*, 234 F. Supp. 368, 370 (E. D. Pa. 1964).

12. *E.g., California Water Service Co.* v. *City of Redding*, 304 U. S. 252, 255 (1938); *German* v. *South Carolina State Ports Authority*, 295 F. 2d 491, 494 (4th Cir. 1961); *Ford* v. *Attorney General of Pennsylvania*, 184 F. Supp. 129 (E. D. Pa.), *affirmed*, 364 U. S. 291 (1960).

13. See notes 1 and 2, *supra*, and accompanying text.

BASIS FOR EQUITABLE RELIEF.

A three-judge court is to be invoked under section 2281 only where the complaint seeks injunctive relief. Before a federal court will assume equitable jurisdiction, however, the groundwork for such relief must be established. The plaintiff must show that there is an absence of a plain and adequate remedy at law and that the enforcement of the statute will cause him irreparable harm and injury. The defendants contend that these requisites do not exist in the instant actions. They assert that plaintiffs are afforded an adequate remedy at law through the adjudication of their claims in the state courts and that the mere possibility of an erroneous application of constitutional standards by those courts does not amount to irreparable injury.

Although in the landmark case of *Ex parte Young*, 209 U. S. 123 (1908), the Supreme Court recognized that federal injunctions would be justified where state officers "threaten and are about to commence proceedings either of a civil or criminal nature, to enforce against parties affected an unconstitutional act, violating the Federal Constitution,"[14] the general requisites for equitable relief have usually been rigorously required by the federal courts in such situations. The application of these limitations has usually been compelled by considerations of federalism. It has been generally assumed that state courts and prosecutors will observe constitutional limitations and exercise their power in good faith. Accordingly, federal interference with the enforcement of state laws has been deemed inconsistent with our federal framework. The normal adjudication of constitutional defenses has been considered to afford parties an adequate remedy at law, and the mere possibility of an erroneous initial application of con-

14. 209 U. S. at 156.

stitutional standards has not usually been considered to amount to the irreparable injury necessary to justify invocation of equitable relief.[15]

The application of these traditional limitations was qualified by the Supreme Court in *Dombrowski* v. *Pfister*, 380 U. S. 479 (1965). The complaint involved in *Dombrowski* sought declaratory relief and an injunction restraining the defendants (state officials) from enforcement of certain allegedly unconstitutional Louisiana anti-subversive statutes. It asserted two distinct grounds for federal relief. First, it alleged that the defendants had invoked, and threatened to continue to invoke, criminal process upon the statutes without any hope of ultimate success, but solely to discourage the plaintiffs' civil rights activities. Second, it alleged that the Louisiana statutes were unconstitutionally broad and vague regulations of expression. A three-judge court dismissed the complaint, reasoning that the case did not present a question of threatened irreparable injury to federal rights and that constitutional defenses could be adequately presented in the normal state adjudicatory process.[16]

On appeal, the Supreme Court reversed, stating,

> [t]he allegations in this complaint depict a situation in which defense of the State's criminal prosecution will not assure adequate vindication of constitutional rights. They suggest that a substantial loss or impairment of freedoms of expression will occur if appellants must await the state court's disposition and ultimate review in this Court of any adverse determination. These allegations, if true, clearly show irreparable injury. 380 U. S. at 485-86.

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15. *See, e.g., Cleary* v. *Bolger*, 371 U. S. 392 (1963); *Douglas* v. *City of Jeannett*, 319 U. S. 157, 161-65 (1943); *Beal* v. *Missouri Pacific R. R. Corp.*, 312 U. S. 45, 49-51 (1941); *Spielman Motor Sales Co.* v. *Dodge*, 295 U. S. 89, 95-97 (1935).

16. *Dombrowski* v. *Pfister*, 227 F. Supp. 556, 562-63 (E. D. La. 1964).

The complaint in the instant action is substantially similar to the one in *Dombrowski*. It alleges two bases for relief: (1) a planned misuse of statutes and ordinances regulating expression by the defendants, and (2) the statutes themselves are unconstitutionally vague and indefinite regulations of expression. The *Dombrowski* case seems to indicate that either of these grounds will support equitable relief.[17]

The complaint, obviously, alleges a formal basis for equitable relief. Thus, it would seem appropriate to convene a three-judge court to determine the constitutionality of the challenged state statutes.

The defendants also contend that this court is barred by section 2283 of Title 28, United States Code, from enjoining any prosecutions against plaintiffs under the statutes and ordinances attacked in this action which are currently pending in the state courts of Illinois.[18]

This question is premature. Section 2283 is not a jurisdictional statute. It is essentially a rule of comity and its demand is directed to the discretion of the federal court.[19] The scope of the present inquiry is limited to whether it is appropriate to convene a three-judge court. This question, therefore, should be reserved for later determination if it becomes relevant.

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17. *See* 380 U. S. at 485-87. See, also, *Carmichael* v. *Allen*, 267 F. Supp. 985 (N. D. Ga. 1967); *Cameron* v. *Johnson*, 262 F. Supp. 873, 878 (S. D. Miss. 1966).

18. Section 2283 provides:

> A Court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

19. *E.g.*, *Baines* v. *City of Danville*, 337 F. 2d 579, 593 (4th Cir. 1964); *Petroleum Corp.* v. *Harper*, 273 F. 2d 715, 718-19 (5th Cir. 1960); *Cameron* v. *Johnson*, 262 F. Supp. 873, 886-87 (S. D. Miss. 1966); *Feldman* v. *Pennroad Corp.*, 60 F. Supp. 716 (Del. 1945), *aff'd.* 155 F. 2d 733 (3d Cir. 1946), *cert. denied* 329 U. S. 808 (1947).

OTHERWISE APPROPRIATE FOR A THREE-JUDGE COURT.

Section 2281, Title 28, United States Code, provides for a three-judge court when the enforcement of a "state-statute" is sought to be enjoined. The Supreme Court has consistently construed this section to encompass only statutes of general and statewide application.[20] The term "statute" does not include city ordinances, local resolutions, or state statutes having only a local application. Similarly, the officer sought to be enjoined must be a state officer. A three-judge court need not be convened where the action seeks to enjoin a local official who is performing acts of purely local concern.[21] It has been held, however, that section 2281 does apply to local officers performing a state function which embodies a policy of statewide concern.[22]

The instant action poses constitutional challenges to both state statute and local ordinances, and seeks to enjoin both state and local officials. The respective challenges to these state statutes and city ordinances present common questions of fact as to whether they are part and parcel of a scheme to deprive the plaintiffs of their federal rights. While a joinder of these claims is permissible under the federal rules of civil procedure,[23] their joinder as inappropriate for purposes of a three-judge court. The state statutes have a state wide applicability. The city ordinances have only a localized applicability. The attack upon the state statutes and the issuance of an injunction against

20. *See, e.g., Moody* v. *Flowers*, 387 U. S. 97 (1966); *Griffin* v. *School Board*, 377 U. S. 218, 227-28 (1963); *Rorick* v. *Board of Commissioners*, 307 U. S. 208 (1939); *Ex parte Collins*, 277 U. S. 565 (1928).

21. *See, e.g., Moody* v. *Flowers*, 387 U. S. 97, 101 (1966); *Rorick* v. *Board of Commissioners*, 307 U. S. 208 (1939); *Ex parte Collins*, 277 U. S. 565, 568 (1928).

22. *Spielman Motor Sales Co.* v. *Dodge*, 295 U. S. 89 (1935); *Briggs* v. *Elliott*, 98 F. Supp. 529 (S. C. 1951).

23. See F. R. Civ. Pro. 18(a), 20(a).

state and local officials charged with their enforcement present issues within the ambit of a three-judge court. The attacks upon the city ordinances and the issuance of an injunction against those charged with their enforcement, present issues which may be properly tried by only a single judge.

The Supreme Court has consistently maintained the view that if a state statute is attacked on substantial federal constitutional grounds and on other grounds as well, a three-judge court is required and has jurisdiction over all the claims raised against the statute.[24] In contrast, however, where a party joins a claim which is appropriate for a three-judge court with an independent claim properly triable before a single judge, the Supreme Court has held that the three-judge court lacks jurisdiction over the independent claim.[25]

This Court concludes, therefore, that the claims regarding the constitutionality of the challenged state statutes should be severed from those involving the municipal ordinances. A three-judge court should be convened to consider the former claims, while the latter shall be tried separately by a single judge.

ABSTENTION.

The defendants assert that federal abstention is applicable to the instant proceeding and should be utilized to allow the state courts an opportunity to adjudicate the areas within their particular competence.

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24. *Florida Lime & Avocado Growers, Inc.* v. *Jacobsen*, 362 U. S. 73 (1960); *Parker* v. *Brown*, 317 U. S. 341 (1943); *Sterling* v. *Constantin*, 287 U. S. 378, 393 (1932); *Louisville & Nashville R. R. Co.* v. *Garrett*, 231 U. S. 298 (1913).

25. *Powell* v. *United States*, 300 U. S. 276, 289-90 (1932); *New York Central Securities Corp.* v. *United States*, 287 U. S. 12 (1932); *Pittsburgh & West Virginia Ry. Co.* v. *United States*, 281 U. S. 479, 488 (1930).

It is true that the doctrine of federal abstention has been applied in situations which are analogous to this.[26] The application of this doctrine has been based on deference to the interest and sovereignty of the states and on the reluctance of the federal courts to adjudicate constitutional questions prematurely when state courts might adopt a statutory construction which would avoid or modify the constitutional issues.[27] Recent authorities, however, indicate the doctrine may not be applicable in situations such as is depicted in instant complaint.[28]

Nevertheless, it is unnecessary to decide this question at the present time. The doctrine of abstention does not go to the jurisdiction of the court; it is essentially a matter of discretion. This question is beyond the scope of the present inquiry, i.e., the appropriateness of a three-judge proceeding to consider the constitutionality of the challenged state statutes and, therefore, the question of abstention is premature.

For the foregoing reasons, defendants' motions to dismiss are denied. A three-judge court will be convened to consider the constitutionality of the challenged state statutes. The issue of the alleged unconstitutional application of the state statutes by the defendants to the plaintiffs will be held in abeyance pending a determination of the threshold question of constitutionality. Similarly, the question of the constitutionality of the challenged or-

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26. *See, e.g., Cleary* v. *Bolger*, 371 U. S. 392 (1962); *Pugach* v. *Dollinger*, 365 U. S. 458 (1960), *affirming* 277 F. 2d 739 (5th Cir.); *Douglas* v. *City of Jeannett*, 319 U. S. 157 (1942).

27. See cases note 26 *supra*.

28. See *Dombrowski* v. *Pfister*, 380 U. S. 479 (1965); *Zwickler* v. *Koota*, 36 L. W. 4041 (1967); *Carmichael* v. *Allen*, 267 U. S. 985 (1967).

dinances will be considered initially by the Court and the issue of the alleged unconstitutional application thereof to plaintiffs held in abeyance. Appropriate orders will be entered.

Hubert L. Will,
United States District Judge.

Dated: December 28, 1967.

IN THE UNITED STATES DISTRICT COURT.

(Title Omitted.)

ANSWER.

The defendants, John S. Boyle, Chief Judge of the Circuit Court of Cook County, Illinois; John J. Stamos, State's Attorney of Cook County, Illinois; Joseph I. Woods, Sheriff of Cook County, Illinois; Maurice W. Lee, Magistrate of the Circuit Court of Cook County, Illinois, and John J. Limperis, Magistrate of the Circuit Court of Cook County, Illinois, by John J. Stamos, State's Attorney of Cook County, Illinois, respectfully allege:

1. They admit the allegations of Paragraph 1.

2. They admit the allegations of Paragraph 2 insofar as they are applicable to these defendants and further aver that the criminal prosecutions for the violation of the Illinois Statutes in question were initiated at least two months prior to the commencement of this action and are still pending in the Criminal Division of the Circuit Court of Cook County, Illinois.

3. They admit the allegations of Paragraph 3 insofar as they are applicable to these defendants and further aver that the criminal prosecutions for the violation of

the Illinois Statutes in question were initiated at least two months prior to the commencement of this action and are still pending in the Criminal Division of the Circuit Court of Cook County, Illinois.

4. They admit the allegations of Paragraph 4 insofar as they are applicable to these defendants and further aver that the criminal prosecutions for the violation of the Illinois Statutes in question were initiated at least two months prior to the commencement of this action and are still pending in the Criminal Division of the Circuit Court of Cook County, Illinois.

5. They admit the allegations of Paragraph 5 insofar as they are applicable to these defendants and further aver that the criminal prosecutions for the violation of the Illinois Statutes in question were initiated at least two months prior to the commencement of this action and are still pending in the Criminal Division of the Circuit Court of Cook County, Illinois. Defendants further aver that the subclass of plaintiffs in Paragraph 5 of the Complaint prosecuted a petition for removal from the State Court to the U. S. District Court for the Northern District of Illinois on September 11, 1967, the cause entitled *Brown, et al. v. People of the State of Illinois and City of Chicago*, 67 C. 1557.

6. They admit the allegations of Paragraph 6 of the Complaint insofar as they apply to these defendants except insofar as the date of arrest. Plaintiff, Frank Ditto, was arrested on August 4, 1966. Defendants further aver that the criminal prosecutions for the violation of the Illinois Statutes in question were initiated in August, 1966 and are still pending in the Criminal Division of the Circuit Court of Cook County, Illinois.

7. They neither admit nor deny the allegations of Paragraph 7 and demand strict proof thereof.

8. They deny the allegations of Paragraph 8.

9. They deny the allegations of Paragraph 9.

10. They admit the allegations of Paragraph 10.

11. They admit the allegations of Paragraph 11.

12. They admit the allegations of Paragraph 12 except that they deny that said defendant is a representative of the class of Judges of the Circuit Court of Cook County, Illinois.

13. They admit the allegations of Paragraph 13.

14. They admit the allegations of Paragraph 14.

15. They admit the allegations of Paragraph 15.

16. They admit the allegations of Paragraph 16.

17. They admit the allegations of Paragraph 17 except that they deny that said defendant is a representative of the class of Magistrates of the Circuit Court of Cook County, Illinois.

18. They admit the allegations of Paragraph 18 except that they deny that said defendant is a representative of the class of Magistrates of the Circuit Court of Cook County, Illinois.

19. They admit the allegations of Paragraph 19 except that they deny that said defendants are representatives of the class of Police Officers of the City of Chicago.

20. They deny the allegations of Paragraph 20.

21. They deny the allegations of Paragraph 21 and all sub-parts thereof.

22. They deny the allegations of Paragraph 22 in that a substantial federal question has not been presented.

23. They deny the allegations of Paragraph 23.

24. They deny the allegations of Paragraph 24.

25. They deny the allegations of Paragraph 25.

26. They deny the allegations of Paragraph 26.

27. They deny the allegations of Paragraph 27.
28. They deny the allegations of Paragraph 28.
29. They deny the allegations of Paragraph 29.
30. They deny the allegations of Paragraph 30.
31. They deny the allegations of Paragraph 31.
32. They deny the allegations of Paragraph 32.
33. They deny the allegations of Paragraph 33.
34. They deny the allegations of Paragraph 34.
35. They deny the allegations of Paragraph 35.
36. They deny the allegations of Paragraph 36.
37. They deny the allegations of Paragraph 37.
38. They deny the allegations of Paragraph 38.
39. They deny the allegations of Paragraph 39.

AFFIRMATIVE DEFENSES.

1. This Court lacks jurisdiction of the subject matter.

2. The Complaint fails to state a claim upon which relief can be granted.

3. Insofar as the Complaint seeks to enjoin the pending prosecutions in the Criminal Division of the Circuit Court of Cook County, Illinois, such requested relief is expressly prohibited by the provisions of 28 U. S. C. 2283.

4. Insofar as the plaintiff seeking injunctive relief against the pending criminal prosecutions in the Criminal Division of the Circuit Court of Cook County, Illinois, they have an adequate remedy at law. Under Illinois law and procedure these same claims can be asserted in the criminal proceedings commenced before the filing of this suit and now pending in the Criminal Division of the Circuit Court of Cook County, Illinois.

5. The doctrine of federal abstention should be applied to preclude the discretionary exercise of the jurisdiction of this Court should such jurisdiction be found by this Court to exist.

WHEREFORE, the defendants respectfully pray that this Complaint be dismissed.

JOHN J. STAMOS,
State's Attorney of Cook County, Illinois,

By EDWARD J. HLADIS,
Chief of Civil Division,
RONALD BUTLER,
Assistant State's Attorney.

(Affidavit omitted in printing.)

UNITED STATES DISTRICT COURT
Northern District of Illinois,
Eastern Division.

LAWRENCE LANDRY, ROMMELL MULLER, JOSEPH H. REYNOLDS, DAVID A. REYNOLDS, JAMES WASHINGTON, FRANK DITTO, ROBERT LUCAS, ROBERT BROWN, MICHAEL ROGERS, BERNARD HUGHES, ARNOLD FORD, VISSA MARIE TURNER, WYSINGO TURNER, ANDREW BROWN, CHARLES FLETCHER, JAMES JONES, HERMAN TOWNSEND, JEROME PARKER, RUDY HOOPER, and ACT, an unincorporated association,

Plaintiffs,

vs.

RICHARD J. DALEY, Mayor of the City of Chicago, Cook County, Illinois; JAMES CONLISK, Superintendent of Police of the City of Chicago, Illinois; JOHN S. BOYLE, Chief Judge of the Circuit Court of Cook County, Illinois; JOHN J. STAMOS, State's Attorney of Cook County, Illinois; RAYMOND F. SIMON, Corporation Counsel of the City of Chicago, Illinois; JOSEPH I. WOODS, Sheriff of Cook County, Illinois; RICHARD J. ELROD, Assistant Corporation Counsel, City of Chicago, Division of Ordinance Enforcement; MAURICE W. LEE, Magistrate, Circuit Court of Cook County, Illinois; JOHN S. LIMPERIS, Magistrate, Circuit Court of Cook County, Illinois; JOHN T. BURKE, JOSEPH RATKVICH and ROBERT KULOVITZ, Police Officers of the City of Chicago,

Defendants.

67 C 1863.

Before HASTINGS, *Circuit Judge*, HOFFMAN and WILL, *District Judges.*

OPINION.

WILL, *District Judge.* This is allegedly a class action, brought by the plaintiffs pursuant to Rule 23(a)(1)(3) of the Federal Rules of Civil Procedure on their own behalf and on behalf of all others similarly situated, seeking declaratory and injunctive relief. Some of the individual plaintiffs are negro citizens who currently face criminal prosecution before the Circuit Court of Cook County, Illinois. These prosecutions arose out of a series of demonstrations taking place in Chicago, Illinois, in 1967. Plaintiff, Act, is an unincorporated association, maintaining offices in Chicago, Illinois, among the purposes of which is to secure negro citizens their federal rights and end all forms of racial segregation and discrimination. To obtain these objectives, it engages in a variety of protest activities, including picketing, demonstrations, rallies, mass meetings, voter registration drives, community organization and publication. Plaintiffs, Lawrence Landry, Robert Lucas, Robert Brown and Michael Rogers are negroes and sue as representatives of the class of all negroes in the City of Chicago. Defendants are either officers of the City of Chicago, Illinois, or officers of Cook County, Illinois.

This Court has jurisdiction of this cause on the basis of both general federal question jurisdiction, 28 U. S. C. § 1331, and specific federal jurisdiction over cases seeking relief for certain specified federal wrongs, 28 U. S. C. § 1343.[1]

The complaint alleges that the defendants have purposefully entered into a plan or scheme of concerted and joint action among themselves and with other persons unknown to the plaintiffs to deprive the plaintiffs of rights,

1. *Landry, et al.* v. *Daley, et al.*, 67 C 1863, pp. 10-11, opinion dated December 28, 1967 (Will, J.).

privileges and immunities secured to them by the Constitution and laws of the United States. Pursuant to this plan, the defendants have allegedly prosecuted and threatened to prosecute the plaintiffs and other members of the class they represent under color and authority of certain statutes of the state of Illinois and certain ordinances of the City of Chicago. It is alleged that certain plaintiffs and other members of the class have been arrested without warrants of any kind or probable cause while peacefully demonstrating, that prosecutions based on these statutes and ordinances have been instituted against these plaintiffs and that they have been held on unreasonable and exorbitant bail. The complaint asserts that these arrests and prosecutions, as well as threats of future enforcement of the statutes and ordinances, have been made by defendants without any expectation of securing valid convictions, but rather are part of a plan to employ arrest, detention on excessive bail and threats of prosecution to harass plaintiffs and their supporters and to discourage them from asserting and exercising their federal rights.

The complaint also alleges that the state statutes and city ordinances under which this plan or scheme has been effectuated are unconstitutional on their face.[2] It is contended that these statutes and ordinances are overbroad, vague and indefinite, permit a construction which would violate plaintiffs' First Amendment guarantees and fail to meet the requisites of certainty and specificity which are

2. The state statutes listed in the complaint are: Ill. Rev. Stat., Ch. 38, § 25-1 (Proscribing "Mob Violence"); Ill. Rev. Stat., Ch. 38, § 31-1 (Proscribing "Resisting or Obstructing a Peace Officer"); Ill. Rev. Stat., Ch. 38, § 21-2 (Proscribing "Aggravated Assault"); Ill. Rev. Stat., Ch. 38, § 12-4 (Proscribing "Aggravated Battery"); Ill. Rev. Stat., Ch. 38, § 12-6 (Proscribing Intimidation").

The city ordinances listed in the complaint are: Municipal Code of Chicago, Ch. 11, § 33 (Proscribing "Obstructing or Resisting a Police Officer"); Municipal Code of Chicago, Ch. 193, § 1 (Proscribing "Disorderly Conduct").

required of criminal statutes under the principles of due process of law.

On the basis of these allegations, the plaintiffs seek: (1) the issuance of declaratory judgments declaring that the state statutes and city ordinances in question are void on their face as violative of the Constitution of the United States, and/or as applied to the conduct of the plaintiffs herein, (2) the issuance of a permanent injunction restraining the defendants, their agents, and attorneys from the enforcement, operation, or execution of any of these statutes and ordinances, and (3) the issuance of a permanent injunction restraining the defendants, their agents and attorneys from impeding, intimidating, hindering and preventing plaintiffs or members and supporters of Act from exercising the rights, privileges, and immunities guaranteed to them by the Constitution and laws of the United States.

Plaintiffs filed their complaint on October 27, 1967. Simultaneously, they moved that a three-judge court be convened to hear and determine the issues presented therein. Shortly thereafter, both the state and city defendants moved to dismiss, contending, *inter alia*, that the complaint failed to diclose a basis for equitable relief and that the doctrine of federal abstention should be utilized to allow the state courts an opportunity to adjudicate the issues presented in the complaint.

An opinion dealing with these motions was issued on December 28, 1967.[3] The defendants' motions to dismiss were denied. The complaint was found to raise several substantial constitutional issues within the competency of a three-judge court and to allege a formal basis for equitable relief. The question of abstention was held to be premature. Plaintiffs' claims regarding the challenged

3. *Landry, et al.* v. *Daley, et al.*, 67 C 1863, opinion dated December 28, 1967 (Will, J.).

city ordinances, however, were found to be inappropriate for determination by a three-judge court.[4] Accordingly, these claims were severed from the claims involving the states statutes and only the latter have been certified to this tribunal.

The issues involving the alleged unconstitutional application of the challenged state statutes have been held in abeyance pending determination of the constitutionality of the statutes themselves. Briefs addresed to the latter issue have been submitted by the parties, and a hearing on these issues was held on January 27, 1968.

[*] Plaintiffs have abandoned their challenges to the constitutionality of the Illinois "Aggravated Assault"[5] and "Aggravated Battery"[6] statutes. The remaining statutes are: the Illinois "Mob Violence" statute,[7] the Illinois "Intimidation" statute,[8] and the Illinois statute proscribing "Resisting or Obstructing a Peace Officer."[9] Plaintiffs assert that these statutes are unconstitutional on their face for reasons of overbreadth, vagueness and indefiniteness.

The Question of Federal Forbearance.

The defendants have reasserted the arguments which they raised in their earlier motion to dismiss. They point out that certain of the plaintiffs currently face prosecution in the state courts for violations of the statutes challenged and that these plaintiffs have not asserted any constitutional attack upon any of these statutes in those criminal proceedings, even though such an attack is readily avail-

4. *Id.* at 17-19.
5. Ill. Rev. Stat., Ch. 38, § 12-2.
6. Ill. Rev. Stat., Ch. 38, § 12-4.
7. Ill. Rev. Stat., Ch. 38, § 25-1.
8. Ill. Rev. Stat., Ch. 38, § 12-6.
9. Ill. Rev. Stat., Ch. 38, § 31-1.

able under Illinois law and procedure. They argue that the plaintiffs have adequate remedies available to them in the state courts and that the mere possibility of an erroneous application of constitutional standards by these courts does not amount to irreparable injury of such a nature as to justify equitable relief. It is also argued that federal declaratory and injunctive relief would be disruptive of the orderly administration of the state courts. Defendants contend, therefore, that this is a proper case for federal abstention.

The defendants' contentions rest on the premise that the principle of federalism requires that a federal district court forbear from direct interference with local law enforcement proceedings. Interference of the nature contemplated herein, it is argued, is destructive of state sovereignty and, hence, jeopardizes our federal system. An ultimate determination of these questions by the state courts, defendants admit, is subject to Supreme Court review. They distinguish such review from federal action at the present time, since the autonomy of local institutions would not be affected immediately and directly.

While state autonomy is a basic consideration, it is not the only one. Federalism is also designed to check local abuse of essential individual rights arising under the Constitution and laws of the United States.[10] The state courts have a duty to preserve these rights, and it has been generally assumed that they will fulfill this duty. The doctrine of abstention has often been invoked in order to avoid federal interference with state criminal prosecutions.[11] Similarly, limitations on federal equitable relief have been rigorously applied on numerous occasions to

10. *See* Note, 75 Yale L. J. 1007 (1966).

11. *See, e.g., Cleary* v. *Bolger*, 371 U. S. 392 (1962); *Pugach* v. *Dollinger*, 365 U. S. 458 (1960), *affirming* 277 F. 2d 739 (5th Cir.); *Douglas* v. *City of Jeannett*, 319 U. S. 157 (1942).

achieve the same result.[12] Deference to the interests and autonomy of the states, however, does not forbid all prior restraint of state criminal proceedings or independent inquiry by a federal tribunal into questions inherently linked with the enforcement of state laws.[13] The federal courts are vested with the primary responsibility of vindicating federal rights.[14] Where state statutes or state conduct allegedly impair rights guaranteed by the Constitution and particularly the First Amendment thereto, federal deference to state tribunals ultimately depends on whether these tribunals can adequately preserve the federal rights of the individual. [15] As is apparent from recent decisions of the United States Supreme Court and inferior federal courts, the fact that constitutional defenses may be raised in state court criminal proceedings does not in and of itself compel or even permit abstention.

In *Dombrowski* v. *Pfister*, 380 U. S. 479 (1965), for example, the Supreme Court clearly dispelled any notion that federalism requires automatic deference to state courts. *Dombrowski* involved a civil action seeking declaratory and injunctive relief from threatened prosecution under a state anti-subversive statute. The plaintiff alleged, first, that the prosecution was instituted in bad

12. *See, e.g., Cleary* v. *Bolger, supra* note 12; *Douglas* v. *City of Jeannett, supra* note 12 at 161-65; *Beal* v. *Missouri Pacific R. R. Corp.*, 312 U. S. 45, 49-51 (1941); *Spielman* v. *Motor Sales Co.*, 295 U. S. 89, 95-97 (1935).

13. *See, Zwickler* v. *Koota*, 389 U. S. 241 (1967); *Dombrowski* v. *Pfister*, 380 U. S. 479 (1965); *Carmichael* v. *Allen*, 267 F. Supp. 985 (N. D. Ga. 1967).

14. *Zwickler* v. *Koota*, 389 U. S. 241, 251 (1967).

15. *See, Zwickler* v. *Koota, supra* note 14 at 249-52; *Dombrowski* v. *Pfister, supra* note 14; *Cf. Cameron* v. *Johnson*, 381 U. S. 741, 748-49, 755-56 (1965) (dissenting opinions). *See, also*, Brewer, *Dombrowski* v. *Pfister: Federal Injunctions Against State Prosecutions in Civil Cases—A New Trend in Federal-State Judicial Relations*, 34 Fordham L. Rev. 71, 90-91 (1965); Note, 75 Yale L. Rev. 1007, 1033-34 (1966).

faith solely to discourage civil rights activities and, second, that the statute was an unconstitutionally vague regulation of freedom of expression. The district court dismissed, applying traditional equitable limitations on a federal court's power to enjoin state criminal proceedings and also the doctrine of abstention.[16]

On appeal, the Supreme Court reversed, indicating that either ground, if proven, justified federal equitable relief. The Court stated,

> [t]he allegations in this complaint depict a situation in which defense of the State's criminal prosecution will not assure adequate vindication of constitution rights. They suggest that a substantial loss or impairment of freedoms of expression will occur if appellants must await the state court's disposition and ultimate review in this Court of any adverse determination. These allegations, if true, clearly show irreparable injury. 380 U. S. at 485-86.

The Court also held that federal abstention was improper "where . . . statutes are justifiably attacked on their face as abridging free expression or as applied for the purpose of discouraging protected activities." *Id.* at 489-90. The controlling consideration on the abstention issue, as on the question of equitable relief, was the inability of the state court proceedings to assure expeditious vindication of federal rights. *Id.* at 490-92. *Cf. Cameron* v. *Johnson*, 381 U. S. 741, 755 (1965) (dissenting opinion).

In *Zwickler* v. *Koota*, 389 U. S. 241 (1967), the Supreme Court again indicated that the federal courts may not defer to the state courts where deference is likely to result in a substantial impairment of federal rights. The appellant in *Zwickler* had sought injunctive and declaratory relief in a federal district court from threatened enforce-

16. *Dombrowski* v. *Pfister*, 227 F. Supp. 556, 562-63 (E. D. La. 1964).

ment of a state statute making it unlawful to distribute anonymous political handbills. Appellant contended that this statute was an over-broad regulation of expression. A three-judge district court applied the abstention doctrine, reasoning that abstention was justified where there were no "special circumstances" entitling plaintiff to an injunction against criminal prosecution.[17]

The Supreme Court reversed the district court and remanded the cause, concluding that irrespective of the propriety of federal injunctive relief, it was inappropriate to abstain from declaratory relief.[18] In its opinion, the Court pointed out that the claimed constitutional infirmity was overbreadth and that no state court construction could obviate this vice. Federal forbearance, it reasoned, would result in delay during which the valid exercise of First Amendment rights might be inhibited.[19] Under such circumstances, it concluded that the federal courts have a duty to provide a federal forum for at least declaratory clarification of the federal claim.[20]

The principles announced by the Supreme Court in *Dombrowski* and *Zwickler* appear clearly applicable in the instant case. Plaintiffs claim that statutes invalid because of vagueness, indefiniteness and overbreadth have been used by defendants in furtherance of a scheme to discourage plaintiffs' legitimate exercise of First Amendment rights. In *Dombrowski*, the Court indicated that defense in a state criminal prosecution is not sufficient to correct either of these evils. Arrest, detention, and threats of prosecution may have an *in terrorem* effect on free expression. Where prosecutions are instituted in bad faith in furtherance of a scheme to discourage protected

17. *Zwickler* v. *Koota*, 261 F. Supp., 985, 993 (E. D. N. Y. 1966).
18. 389 U. S. 241, 254-55 (1967).
19. *Id.* at 249-52.
20. *Id.* at 245-48, 251-52.

activities, the ultimate success of the defendant does not alter the impropriety of the unconstitutional scheme.[21] The adjudication simply resolves the guilt or innocence of the defendant; it does not purge the scheme of its impact upon federally protected rights.[22]

Similarly, the possible application of a vague, uncertain, or overbroad statute regulating freedom of expression may have an inhibiting effect on the valid exercise of freedom of expression. Where prosecution is instituted under such a statute and its provisions are not susceptible to clarification in a single prosecution, defense in a state criminal proceeding is likely to lead to piecemeal construction resolving only the uncertainty of the defendant with no likelihood of obviating similar uncertainty for others.[23] Those affected or potentially affected by such a statute, however, are entitled to be free from the burden of resolving its uncertainty through state prosecutions.[24]

Defendants contend that the conduct of the plaintiffs who are facing state prosecution is "hard core conduct" which would obviously be prohibited under a narrow and clearly constitutional construction of the statutes. Hence, they argue, federal equitable relief is completely unwarranted. But even assuming arguendo that equitable relief is unwarranted, this does not, as *Zwickler* holds, obviate plaintiffs' right to declaratory relief. Moreover, the class also in-

21. 380 U. S. at 490.

22. Although *Dombrowski* dealt only with the bad faith enforcement of statutes regulating speech, commentators have suggested that its holding is not limited to the First Amendment area. *See*, Brewer, *Dombrowski* v. *Pfister: Federal Injunctions Against State Prosecutions in Civil Rights Cases—A New Trend in Federal-State Judicial Relations*, 34 Fordham L. Rev. 71 (1965); *Note*, 75 Yale L. Rev. 1007, 1033-34 (1966). *Cf.* Bailey, *Enjoining State Criminal Prosecutions Which Abridge First Amendment Freedoms*, 3 Harv. Civ. Rights Lib. L. Rev. 67 (1967).

23. *See* 380 U. S. at 490-92. *See, also, Cameron* v. *Johnson*, 381 U. S. 741, 755 (1967) (dissenting opinion).

24. 389 U. S. at 491.

cludes plaintiffs who do not now face prosecution. The statutes in dispute are challenged on grounds of overbreadth, as well as vagueness.[25] *Zwickler* indicates that under such circumstances a federal court has a duty to adjudicate the federal claims which are before it and to render declaratory relief one way or the other.[26]

The Applicable Constitutional Principles.

As noted earlier, this suit arises out of the application and threatened future application of certain Illinois statutes and ordinances of the City of Chicago to plaintiffs' civil rights activities. The claims regarding the application of the city ordinances do not pose a proper question for a three-judge court and have been severed from the instant proceeding for consideration by a single judge. The plain-

25. It should be noted that *Dombrowski* specifically held that federal abstention is inappropriate where a statute regulating expression is challenged on grounds of vagueness. 380 U. S. at 489-90. Normally, the state must assume the burden of obtaining a permissible narrow construction by way of a declaratory judgment proceeding, if it wishes to avoid a federal proceeding. *Id.* at 491. There is an exception to this prescription. Where a readily apparent construction suggests itself as a vehicle for rehabilitating the statutes in a single prosecution, federal forbearance is proper. *Id.* at 491. It is apparent, however, that this exception applies only if the entire statute is amenable to correction in one prosecution where all the vagueness and overbreadth will be eliminated. Bailey, *Enjoining State Criminal Prosecutions Which Abridge First Amendment Freedoms*, 3 Harv. Civ. Rights-Civ. Lib. L. Rev. 67, 90 (1967).

The plaintiffs in the present suit challenge three different state statutes on both grounds of vagueness and overbreadth. One of these statutes, the Intimidation statute, is not involved in any of the prosecutions currently pending in the state courts. It is obvious, herefore, that the present suit does not come within the exception recognized in *Dombrowski*.

26. *See* 389 U. S. at 249-50, 253-54. It should also be noted that the normal rules of standing are relaxed in the area of First Amendment freedoms. Defendants under criminal prosecution are permitted to challenge overbroad statutes on their face, without demonstrating that their own conduct could not constitutionally have been proscribed by a different and more precise enactment. *See Thornhill* v. *Alabama*, 310 U. S. 88, 97-98 (1940).

tiffs' claims in regard to the remaining state statutes are, first, that these statutes have been applied in bad faith, solely for the purpose of discouraging their civil rights activities, and, second, that the Illinois "Mob Action" statute, "Resisting Arrest" statute, and "Intimidation" statute are unconstitutionally uncertain both for reasons of vagueness and overbreadth. The adjudication of the first grounds has been held in abeyance and the scope of the present inquiry, accordingly, has been limited to the constitutionality of the provisions of the three statutes which plaintiffs assail. Before undertaking any discussion of these specific statutes, however, a brief canvass of the applicable constitutional principles would seem appropriate.

In its most basic sense, the present suit involves the boundaries of state regulation of demonstrations, picketing, mass protest meetings, marches, and similar assemblies. Although demonstrations are distinguishable from other forms of self expression, it is generally recognized that they are within the protection of the First Amendment. There are two basic reasons for this. The first is that the fundamental considerations underlying the rights of free speech and peaceful assembly are also relevant to peaceful demonstration. Peaceful demonstration, like the rights of free speech and peaceful assembly, advances society's interests in a variety of ways. Through peaceful demonstration, individual members of society may express their views and thereby participate in the political apparatus of a democracy. Demonstration, like most conventional means of expression, also assures the disclosure and discussion of the real issues faced by society, thereby making possible rational judgment by the electorate. It provides an outlet for dissenting people, and history reveals that dissentient groups are more likely to adhere to the majority will, if their views have also been aired. Similarly, it provides

minorities an opportunity to force re-examination of social institutions, to enlist the sympathy of other citizens, to mobilize supporters and ultimately to strengthen their bargaining position.[27] Ultimately, therefore, peaceful demonstration plays a role in the maintenance of a balance between stability and change in society, very much like other First Amendment rights.

The second reason is that peaceful demonstration is a practical means of political protest.[28] More conventional means of self-expression often are of little real utility to political minorities. The instruments of mass media may be beyond their financial resources and political leaders may turn a deaf ear to persons who are unpopular with, or unknown to, the general public. A demonstration, therefore, may be the only effective means by which a minority can publicize a message or reach a desired audience.[29]

Demonstrations will sometimes, however, conflict with various other legitimate state interests. In such instances, their social value must be subordinated to other values and considerations. Perhaps the most important counter-vailing consideration is the state's interest in preventing physical violence or abuse of property. Thus, demonstrations lose their constitutional protection if the participants engage in violence.[30] And, under certain circumstances, conduct short of violence may also subject demonstrators to arrest or dispersal. For instance, provocative conduct or language which undertakes incitement to riot may also

27. *See* Note, 80 Harv. L. Rev. 1773 (1967).

28. *See Adderley* v. *Florida*, 385 U. S. 39, 50-51 (1966) (dissenting opinion).

29. Note, 80 Harv. L. Rev. 1773 (1967).

30. *See, e.g., Feiner* v. *New York*, 340 U. S. 315 (1951); *Pritchard* v. *Davis*, 326 F. 2d 323 (1964); Note, 80 Harv. L. Rev. 1773, 1774-75 (1967).

lead to loss of constitutional protection.[31] Other state interests which have been held to justify similar regulation of demonstrations include the maintenance of the free flow of traffic[32] and the prevention of substantial interference with government operations or the regular use of public property.[33]

Although the Supreme Court has indicated that demonstrations are subject to greater state regulation than "pure speech,"[34] it seems clear that the state may only impose "reasonable" restrictions on time, place, duration, or manner.[35] The reasonableness of a regulatory measure must necessarily be viewed in terms of the competing interests of the demonstrators and the state. In cases where the

31. *See Feiner* v. *New York*, 340 U. S. 315, 321 (1951); *Chaplinsky* v. *New Hampshire*, 315 U. S. 568, 573 (1942). Although the Supreme Court accorded protection to "boisterous," "loud," and "flamboyant" conduct in *Edwards* v. *South Carolina*, 372 U. S. 229, 233 (1963), even noisy conduct may justify restrictions on demonstrations under some circumstances. *See Kovacs* v. *Cooper*, 336 U. S. 77 (1949).

32. *E.g.*, *Farmer* v. *Moses*, 232 F. Supp. 154 (S. D. N. Y. 1964); *Clemons* v. *Congress of Racial Equality*, 201 F. Supp. 737 (E. D. La. 1962). *See, also, Cox* v. *Louisiana*, 379 U. S. 536, 554-55 (1965).

33. *See Adderley* v. *Florida*, 385 U. S. 39 (1966); *United States* v. *Aarons*, 310 F. 2d 341 (2d Cir. 1962); *Frend* v. *United States*, 100 F. 2d 691 (D. C. Cir.) *cert. denied*, 306 U. S. 640 (1938). See, also, *Brown* v. *Louisiana*, 383 U. S. 131, 157 (1966) (dissenting opinion); *Cox* v. *Louisiana*, 379 U. S. 536, 561-64 (1965). Other state interest which might justify restrictions on demonstrations in some circumstances would seem to include the interests of protecting individual privacy and private property. *See Kamin, Residential Picketing and the First Amendment*, 61 N. W. L. Rev. 177 (1966); Note, 80 Harv. L. Rev. 1773, 1777-80 (1967).

34. *See Cox* v. *Louisiana*, 379 U. S. 536, 555 (1965). For instance, a distinction between "pure speech" and "speech plus" might be drawn. *See* Kalvin, *The Concept of the Public Forum: Cox* v. *Louisiana*, 1965 Sup. Ct. Rev. 1, 22-25 (1965). This distinction, however, would seem to merely point out that certain state interests may conflict with the right to demonstrate and other forms of "speech plus" to a greater extent than with "pure speech."

35. *See Cox* v. *Louisiana*, 379 U. S. 536, 558 (1965).

reasonableness of the application of a regulatory measure is challenged, this question ultimately depends upon the balance of a number of factors: the gravity of the evil which the state seeks to prohibit, the probability of the evil, the conduct and intent of the demonstrators, the circumstances of the demonstration, and the alternatives open to the government which infringe upon the demonstrator's interests to a lesser extent.[36] In cases where the reasonableness of the regulatory measure itself is challenged, as in the present case, the constitutionality of the regulation turns upon its certainty and its breadth.[37]

The cases in this latter category actually involve two distinct concepts: (1) vagueness or indefiniteness, and (2) overbreadth.[38] These questions frequently overlap in any given case and are often loosely referred to in the aggregate as the "vagueness doctrine." Their application, however, is based on different constitutional principles.

The concept of vagueness or indefiniteness rests on the constitutional principle that procedural due process requires fair notice and proper standards for adjudication. The primary issues involved are whether the provisions of a penal statute are sufficiently definite to give reasonable notice of the prohibited conduct to those who wish to avoid

36. *See Yates* v. *United States*, 354 U. S. 298, 318-27 (1957); *Dennis* v. *United States*, 341 U. S. 494, 508-11 (1951). *See, also*, Mendelson, *Clear and Present Danger Test—From Schenck to Dennis*, 52 Colum. L. Rev. 313 (1952); Richardson, *Freedom of Expression and the Function of Courts*, 65 Harv. L. Rev. 1 (1951); Note, 71 Harv. L. Rev. 85, 123-25 (1957).

37. *See, Ashton* v. *Kentucky*, 384 U. S. 195, 200-201 (1966); *Shuttleworth* v. *City of Birmingham*, 382 U. S. 87, 93-95 (1965); *Baggett* v. *Bullitt*, 377 U. S. 360, 373-84 (1964); *Edwards* v. *South Carolina*, 372 U. S. 229, 237-38 (1963); *N. A. A. C. P.* v. *Button*, 371 U. S. 916, 432-38 (1963).

38. *See, generally*, Collings, *Unconstitutional Uncertainty—An Appraisal*, 40 Cornell L. Rev. 195 (1965). *Cf.* Amsterdam, The Void-for-Vagueness Doctrine in the Supreme Court, 109 U. Penn. L. Rev. 67 (1960).

its penalties and to apprise judge and jury of standards for the determination of guilt.[39] If the statute is so obscure that men of common intelligence must necessarily guess at its meaning and differ as to its applicability, it is unconstitutional.[40]

The concept of overbreadth, on the other hand, rests on principles of substantive due process which forbid the prohibition of certain individual freedoms. The primary issue is not reasonable notice or adequate standards, although these issues may be involved. Rather the issue is whether the language of the statute, given its normal meaning, is so broad that its sanctions may apply to conduct protected by the Constitution.[41] Frequently, the resolution of this issue depends upon whether the statute permits police and other officials to wield unlimited discretionary powers in its enforcement.[42] If the scope of the power permitted these officials is so broad that the exercise of constitutionally protected conduct depends on their own subjective views as to the propriety of the conduct, the statute is unconstitutional.[43]

These concepts have particular relevance to statutes touching upon the areas of free speech and assembly. Although the state may regulate speech and assembly where the exercise of these rights conflicts with certain state

39. *See* Collings, *supra* note 38 at 196-97.

40. *E.g.*, *Baggett* v. *Bullitt*, 377 U. S. 360, 367-73 (1964); *Cramp* v. *Board of Public Instruction*, 368 U. S. 278, 287 (1961); *Lanzetta* v. *New Jersey*, 306 N. S. 451, 453 (1939).

41. *See* Collings, *supra* note 38 at 196-97.

42. *See, e.g.*, *Ashton* v. *Kentucky*, 384 U. S. 195, 200-201 (1966); *Shuttleworth* v. *City of Birmingham*, 382 U. S. 87, 90-92 (1965); *Edwards* v. *South Carolina*, 372 U. S. 229, 237-38 (1963).

43. *See, e.g.*, *Shuttleworth* v. *Birmingham*, 382 U. S. 87, 90 (1965); *N. A. A. C. P.* v. *Button*, 371 U. S. 415, 433, 435-36 (1963). *See, also*, Amsterdam, *The Void-for-Vagueness Doctrine in the Supreme Court*, 109 U. of Pa. L. Rev. 67, 75-76, 80-81, 96-104 (1960). *Cf. Baggett* v. *Bullitt*, 377 U. S. 360, 371 (1964); *Smith* v. *California*, 361 U. S. 147, 151 (1961).

interests, it may regulate only to the extent necessary to discharge these interests.[44] A vague or overbroad statute, however, is likely to have a deterrent effect which is beyond that necessary to fulfill the state's interests. Rather than chance prosecution, people will tend to refrain from speech and assembly which might come within the statute's ambit.[45]

Such a deterrent effect on the exercise of these rights is impermissible under the First Amenrment.[46] The Amendment was designed not only to protect these rights, but also to encourage their use. Consequently, the requirements of clarity, definiteness, and narrow scope are most strictly observed when a statute places a possible limitation upon First Amendment rights.[47] Such scrutiny is necessary to provide a buffer between the valid exercise of the police power by the state and excessive restriction of the free dissemination of ideas.[48]

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44. *See De Jonge* v. *Oregon*, 299 U. S. 363, 365-66 (1937); *Stromberg* v. *California*, 283 U. S. 359 (1931); *Cf. Yates* v. *United States*, 354 U. S. 298 (1957).

45. *Dombrowski* v. *Pfister*, 380 U. S. 479, 486-89 (1965); *N. A. A. C. P.* v. *Button*, 371 U. S. 415, 432-33 (1963); *Winters* v. *New York*, 333 U. S. 507, 519-20 (1948); *Thornhill* v. *Alabama*, 310 U. S. 88, 97-98 (1940); *Herndon* v. *Lowry*, 301 U. S. 242, 261-62 (1937).

46. *See, e.g., Dombrowski* v. *Pfister*, *supra* at 494-96; *Freedman* v. *Maryland*, 380 U. S. 51, 59-60 (1965); *N. A. A. C. P.* v. *Button*, *supra* at 437; *Thornhill* v. *Alabama*, *supra* at 101-106.

47. *E.g., Keyishian* v. *Board of Regents*, 385 U. S. 589, 603-04 (1967); *Cox* v. *Louisiana*, 379 U. S. 536, 551-52 (1965); *Edwards* v. *South Carolina*, 372 U. S. 229, 237-38 (1963); *Cramp* v. *Board of Public Instruction*, 368 U. S. 278, 287-88 (1961).

48. This rationale has been described most succinctly by Mr. Justice Brennan for the Court in *N. A. A. C. P.* v. *Button*, 371 U. S. at 433: "These freedoms are delicate and vulnerable, as well as supremely precious in our society. The threat of sanctions may deter their exercise almost as potently as the actual application of sanctions . . . Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity." *See, also,* Amsterdam, *supra* note 43 *supra.*

A number of factors are taken into consideration in determining whether a state regulation meets these standards of clarity and narrowness. Among them are: (1) whether a substantial interest worthy of protection is identified or apparent from the language of the statute;[49] (2) whether the terms of the regulation are susceptible to objective measurement by men of common intelligence;[50] (3) whether those charged with its enforcement are vested only with limited discretion;[51] (4) if penal, whether some element of knowledge or intent to obstruct a state interest is required,[52] and (5) whether its clarity is dependent upon manifold cross-reference to interrelated enactments or regulations.[53]

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49. *See* Note, 80 Harv. L. Rev. 1773, 1788 (1967).

50. *See Keyishian* v. *Board of Regents*, 385 U. S. 589, 604 (1967). *See, also*, authorities cited in note 40 *supra* and accompanying text.

51. *Compare Cox* v. *New Hampshire*, 312 U. S. 569, 575-76 (1941); *with, Shuttleworth* v. *Birmingham*, 382 U. S. 87, 90-92 (1965); *Edwards* v. *South Carolina*, 372 U. S. 229 (1963).

52. *See Adderley* v. *Florida*, 385 U. S. 39, 42-43 (1967). *See, also, Cox* v. *Louisiana*, 379 U. S. 559 (1965), wherein a Louisiana statute regulating picketing in or near a court house "with intent to interfere" with the administration of justice was upheld as valid on its face. On other occasions, the Supreme Court when holding a statute unconstitutional has emphasized the fact that the law reached innocuous acts. *Keyishian* v. *Board of Regents*, 385 U. S. 589, 599-601 (1967); *Baggett* v. *Bullitt*, 377 U. S. 360, 368-72 (1964). Moreover, the Supreme Court has held on a number of occasions that a conviction based upon membership in a group which pursues illegal ends requires a specific intent to further such ends. *See Elfbrant* v. *Russell*, 384 U. S. 11, 19 (1966); *Cramp* v. *Board of Public Instruction*, 368 U. S. 278, 285-87 (1964); *Noto* v. *United States*, 267 U. S. 290, 299-300 (1961). *Cf.* Collings, *supra* note 38 at 227-231.

53. *See Keyishian* v. *Board of Regents*, 385 U. S. 589, 604 (1967).

THE MOB ACTION STATUTE.

Plaintiffs contend that the Illinois Mob Action statute, Ill. Rev. Stat. Ch. 38, § 25-1, is void for both reasons of vagueness and overbreadth. It provides:

(a) Mob action consists of any of the following:

(1) the use of force or violence disturbing the public peace by two or more persons acting together and without authority of law; or

(2) The assembly of two or more persons to do an unlawful act; or

(3) The assembly of two or more persons, without authority of law, for the purpose of doing violence to the person or property of any one supposed to have been guilty of a violation of the law, or for the purpose of exercising correctional powers or regulative powers over any person by violence.

(b) Any person engaged in mob action shall be fined not to exceed $500 or imprisoned in a penal institution other than the penitentiary not to exceed thirty days, or both.

(c) Any participant in a mob action which shall by violence inflict injury to the person or property of another shall be fined not to exceed $1,000 or imprisoned in a penal institution other than the penitentiary not to exceed one year, or in the penitentiary from one to five years, or both fined and imprisoned.

(d) Any participant in a mob action who does not withdraw on being commanded to do so by any peace officer shall be fined not to exceed $500 or imprisoned in a penal institution other than the penitentiary not to exceed one year, or both.

This statute is a section of the Illinois Criminal Code of 1961. It represents a compilation of the prior criminal offenses of rout, riot, affray, unlawful assembly and mob

action.[54] The statute has not been construed by the Illinois courts. Under these circumstances, we must place our own construction on the statute, giving the words their reasonable and natural meaning.

The statute proscribes three separate categories of conduct as "Mob Action." Since these provisions are not interdependent and the validity of the statute as a whole would not rest on any one of them,[55] we shall examine each separately.

Subparagraph (1)(a) proscribes:

> The use of force or violence disturbing the public peace by two or more persons acting together and without authority of law.

It is obvious that this provision was designed for the protection of persons and property and for the maintenance of public order. It cannot be questioned that the state of Illinois has an interest in preventing physical violence to persons or abuse to private or public property. Indeed, the constitutional guarantee of liberty presupposes the existence of an orderly society, wherein grievances and disputes are settled by peaceful means rather than force and violence. This is a sufficiently strong state interest to justify regulation of certain demonstrations.

Although this provision resembles breach-of-peace statutes, it is not so vague or indefinite as to be invalid. The use of "force or violence" is specifically required. The words "force" and "violence" are not so obscure as to fail to advise the public of the prohibited conduct. In common parlance, force means "power, violence, compulsion, or

54. Ill. Rev. Stat. Ann. ch. 38, § 25-1 (Smith-Hurd 1964) (Committee Comments).

55. *See* Ill. Rev. Stat. Ann. ch. 38, § 34-2 (Smith-Hurd 1964).

constraint exerted upon or against a person or thing."[56] The word "violence" imparts a similar meaning. It means "the exertion of any physical force so as to injure or abuse."[57] "Force," "violence," "compulsion," "constraint," and "restraint" convey a similar idea of the exertion of power against the will, wish or consent of another.[58] Given a reasonable and natural construction, these terms connote either physical attack upon person or property, or physical aggression reasonably capable of inspiring fear of injury or harm to a person or property. We believe it is apparent, then, that a reasonable interpretation of this provision precludes its applicability to the peaceful exercise of the rights of free speech and assembly.

The statute further requires that two or more persons be "acting together" and "without authority of law." We see no ambiguity in the phrase "acting together." In the context of this provision, it conveys combined, conjoint or concerted action. The phrase "without authority of law" is apparently designed to limit the scope of the enactment by excepting those situations in which the law recognizes a justifiable use of force, such as by police officers, to the extent reasonably necessary to effect an arrest; by persons acting in self-defense, etc.[59] While for reasons explained later herein, the phrase lacks some clarity, this would not seem fatal to this provision.

Similarly, subparagraph (a)(1) does not seem suscept-

56. Webster, New International Dictionary p. 3a (3d ed. 1963 Unabridged). It is also defined as "violence or such threat or display of physical aggression toward a person as reasonably inspires fear of pain, bodily harm, or death. *Id.* at p. 3c.

57. Webster, New International Dictionary p. 1a (3d. ed. 1963 Unabridged).

58. *People* v. *McIlvain*, 55 Cal. App. 2d 322, 130 P2d 131, 134 (2d Dist. 1942).

59. See Ill. Rev. Stat. Ann. Ch. 38, § 7-1, et seq. (Smith-Hurd 1964).

ible to an overbroad application. The use of force or violence is specifically required before it is applicable.[60] It proscribes only non-peaceful demonstrations and is not suggestive of a vehicle for the suppression of ideas. Moreover, the use of force or violence carries with it *sub silentio* a destructive or threatening intent. Furthermore, the scope of the provision is narrowed by the requirements that the persons to which it is applicable be "acting together" and "without authority of law." Even without the latter phrase, this provision reaches only a narrow scope of conduct which is not protected by the First Amendment.

Subparagraph (a)(2) proscribes:

> The assembly of two or more persons to do an unlawful act; or

The revisor's note to the Illinois Criminal Code of 1961 indicates that this provision incorporates the common-law offense of "unlawful assembly."[61] We do not doubt that the state of Illinois has a valid interest in preventing a project which will breach its criminal laws. However, the language of subparagraph (a)(2) is not so limited. This provision proscribes an assembly to do an "unlawful act." The phrase "unlawful act" in its normal meaning is not limited to criminal illegality; it includes city regulatory ordinances, quasi-criminal ordinances, torts, or other civil

60. Although the standard breach-of-peace statute may be so broad and all-embracing that its constitutionality becomes doubtful, the crucial defect stressed by the Supreme Court in both *Cox* v. *Louisiana*, 379 U. S. 536 (1965), and *Edwards* v. *South Carolina*, 372 U. S. 229, 237 (1963), was the use of such a statute against peaceful conduct. In *Cox*, however, the Court seemed to suggest that breach-of-peace statutes may still be used to convict demonstrators who are either violent or past the bounds of argument. 279 U. S. at 551-52. Note, 80 Harv. L. Rev. 1773, 1783 (1967). Clearly, therefore, where the statute itself requires violence, it would appear to be constitutional.

61. Ill. Rev. Stat. Ann. Ch. 38, § 25-1 (Smith-Hurd 1964) (Committee Comments).

wrongs.[62] This implies protection of other state interests which are not readily apparent, and which may not justify suppression of speech or assembly.

This provision certainly goes beyond narrowly drawn statutes "concerning the time, place, duration, or manner of use of the streets for public assemblies."[63] Moreover, the phrase "unlawful act" fails to apprise the public of the prohibited conduct. Men of ordinary intelligence have no way of ascertaining what breach of criminal or civil law may subject them to arrest and prosecution.

Under a literal application of the section, a wide variety of conduct which would at most constitute a misdemeanor or which might involve no criminal act at all but which would be "unlawful" merely in a civil sense becomes felonious if two or more persons gather together to perform it. Moreover, the language apparently would make the act of assembling to contemplate or consider "unlawful" conduct a crime even though the project was ultimately abandoned and the "unlawful" acts never performed.

Perhaps this provision's greatest vice is that it is a ready vehicle for the suppression of ideas. Failing as it does to define what constitutes an "unlawful act," it leaves too much to the calculation of its enforcer. If the ideas portrayed by demonstrators do not coincide with the subjective views of police, any technical violation of either civil or criminal law may be invoked to suppress a demonstration.[64] The "potential for arbitrarily suppressing First

62. For instance, the phrase "unlawful act" may be contrasted with the term "offense." This latter term is specifically defined as and limited to the "violation of any penal statute of the state." Ill. Rev. Stat. Ch. 38, § 3-12 (1967).

63. *See Cox* v. *Louisiana*, 379 U. S. 536, 558 (1965).

64. In this sense, it is similar to the statutes which were overturned in *Cox* v. *Louisiana*, 379 U. S. 536, 555-57 (1965) and *Edwards* v. *South Carolina*, 372 U. S. 229, 233-37 (1963).

Amendment liberties" is all too clear. *Shuttlesworth* v. *Birmingham*, 382 U. S. 87, 90-91 (1965). In light of the protection afforded peaceful assembly by the First Amendment, we conclude that this provision is impermissively vague and overbroad.

Subparagraph (a)(3) proscribes:

> The assembly of 2 or more persons, without authority of law, for the purpose of doing violence to the person or property of any one supposed to have been guilty of a violation of the law, or for the purpose of exercising correctional powers or regulative powers over any person by violence.

The gist of this offense is "the exercise by violence of purported correctional power."[65] It is readily apparent that this provision is designed to protect persons and their property who are accused of crime or otherwise subject to public wrath.[66] Thus, it involves not only the interest of protecting persons and property, but also the interest of preventing the usurpation of the police powers by unauthorized groups. These interests are sufficiently strong to justify regulation of such demonstrations.

This provision contains no patent ambiguities. The word "assembly" has a definite connotation in every day conversation as meaning "a company of persons collected together in one place for some common purpose."[67] The

65. Ill. Rev. Stat. Ann. Ch. 38, § 25-1 (Smith-Hurd 1964) (Committee Comments).

66. The predecessor of this provision was the subject of an opinion in *Slaton* v. *City of Chicago*, 8 Ill. App. 2d 47, 130 N. E. 2d 205 (1st Dist. 1955). As interpreted therein one of the purposes of this provision is "to discourage and prevent interference with the orderly processes of administering the law or powers delegated to the lawful authorities, and the usurpation of those powers, wholly or in part, by unauthorized groups of persons for what they wrongfully assume to be a collective interest." *Id.* at 57, 130 N. E. 2d at 210. *See, also, Anderson* v. *City of Chicago*, 313 Ill. App. 616, 40 N. E. 2d 601 (1st Dist. 1942).

67. Webster, New International Dictionary n. 1a (3d ed. 1964, Unabridged).

phrase "without lawful authority" obtains meaning from the purpose and context of the provision. It excludes police and other officials who can legally exercise the police power. Similarly, the word "violence" as noted above, conveys a commonly understood meaning and as used herein connotes either physical attack upon persons or property, or physical aggression reasonably capable of inspiring fear of injury or harm.

Amici curiae urge that this provision is invalid for vagueness because it includes an assembly "for the purpose of exercising correctional powers or regulative powers over any person." Rather than broadening the scope of the provision, however, this language limits it. When the last two words "by violence" are included, it clearly proscribes only an assembly for the purposes of administering punishment to or exercising coercion upon a person by physical force. Given a reasonable and natural construction, therefore, this provision does not fail to provide fair notice or adequate standards.

Likewise, the section poses no problems of scope. It is directed only at conduct which endangers persons or property and which usurps the role of the state. It requires specific intent, i.e., an intent to do violence to a person or his property or an intent to exercise corrective powers or regulatory powers over a person by violence. The use of the word "assembly" requires that this intent be shared by members of the group. These standards clarify and narrowly limit the scope of the section. Normally construed and properly applied, this provision is neither vague nor overbroad.

The "Mob Action" statute also promulgates three penalties for the conduct proscribed therein. *Amici curiae* suggest that the language used in each of these provisions is ambiguous when read in reference to the proscribed conduct.

For purposes of clarity, the effect of each of these provisions will be considered separately.

Sub-section (b) provides penalties in regard to "any person engaged in mob action." The basic question is how the phrase "engaged in" is to be read in reference to subparagraphs (a)(1) and (a)(3). The word "engage" has a common, well-understood import. It means "to occupy, to employ, or to involve."[68] When the phrase "any person engaged in" is read in conjunction with subparagraph (a)(1) a clear and narrow meaning emerges; any person occupied in or employed in the use of force or violence is subject to penalty. This meaning poses no problems of breadth or clarity.

When the phrase "engaged in" is read in conjunction with subparagraph (a)(3) a similarly clear and narrowing meaning is apparent. Any person who is employed or occupied in a group with a common purpose to use violence against a person or property or to punish or coerce a person by violence is subject to penalty. This language is clear and poses no problems of substantive due process.

Subsection (c) provides penalties for "any participant in a mob action which shall by violence inflict injury to the person or property of another." Participant" is commonly defined as "one that takes part or shares in something with others."[69] Given a reasonable and natural construction, this phrase, when read in conjunction with subparagraph (a)(1), means one who takes part in or shares in the use of force or violence. Similarly, this phrase, when read in conjunction with subparagraph (a)(3), means one who takes part in or shares in a group with a common purpose to use violence against a person or property or

68. Webster, New International Dictionary n. 1 (3d ed. Unabridged).

69. Webster, New International Dictionary n. 1 (3d ed. Unabridged).

to punish or coerce a person by the use of violence. These constructions would seem readily apparent to men of ordinary intelligence.

Nevertheless, the scope and clarity of this provision has been challenged. Implicit in the statute, it is argued, is a distinction between being actually "engaged in" a mob action and being a "participant" in a mob action. The former phrase implies the applicability of the statute to those who actually are involved in a scheme prohibited by subparagraph (a) (3). The latter phrase, it is contended, implies the applicability of the statute to those who are involved to a lesser extent. It is urged that the statute might properly be construed to be applicable to persons who participate in an initially peaceful demonstration, when unbeknown to them or contrary to their desires and intention, other members of the group commit violence inflicting injury during the course of the demonstration. In other words, it is argued that the statute might be applicable to a peaceful member of an assembly who supports the lawful but not unlawful purpose of the assembly. Indeed, it is contended that the word "participant" is so ambiguous that the statute might be applicable to a bystander in close proximity to the violent "mob action."

We need not speculate about the possible implications of the word "participant." As noted earlier, the Mob Action statute is a provision of the Illinois Criminal Code of 1961. It is limited, as are the other statutes in the Criminal Code, by the provisions of Ill. Rev. Stat. ch. 38, § 4-3 (1967).

Section 4-3(a) provides that a person is not guilty of an offense, other than an offense which involves absolute liability, unless with respect to each element described by the statute defining the offense, he acts while having one of

the mental states described subsequently in the Code. Section 4-3(b) further provides in pertinent part:

> If the statute does not prescribe a particular mental state applicable to an element of an offense . . . , any mental state defined in Sections 4-4 [defining "Intent"], 4-5 [defining "knowledge"], or 4-6 [defining "Recklessness"] is applicable.

The Mob Action statute does not involve absolute liability.[70] Therefore, a person cannot be guilty of the conduct proscribed by the Mob Action statute unless he intentionally,[71] knowingly, [72] or recklessly[73] engages in such conduct. These requirements substantially narrow the scope

70. *See* Ill. Rev. Stat. ch. 38, § 4-9 (1967).

71. A person intends, or acts intentionally or with intent, to accomplish a result or engage in conduct described by the statute defining the offense, when his conscious objective or purpose is to accomplish that result or engage in that conduct. Ill. Rev. Stat. ch. 38, § 4-4 (1967).

72. A person knows, or acts knowingly or with knowledge of:
(a) The nature or attendant circumstances of his conduct, described by the statute defining the offense, when he is consciously aware that his conduct is of such nature or that such circumstances exist. Knowledge of a material fact includes awareness of the substantial probability that such fact exists.
(b) The result of his conduct, described by the statute defining the offense, when he is consciously aware that such result is practically certain to be caused by his conduct.
Conduct performed knowingly or with knowledge is performed wilfully, within the meaning of a statute using the latter term, unless the statute clearly requires another meaning. Ill. Rev. Stat. ch. 38, § 4-5 (1967).

73. A person is reckless or acts recklessly, when he consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow, described by the statute defining the offense; and such disregard constitutes gross deviation from the standard of care which a reasonable person would exercise in the situation. An act performed recklessly is performed wantonly, within the meaning of a statute using the latter term, unless the statute clearly requires another meaning. Ill. Rev. Stat. ch. 38, § 4-6 (1967).

of the offense. They clarify and limit it and supply objective standards for the adjudication of guilt.[74]

Moreover, in light of these requirements it can not be said that the inclusion of the word "participant" in a statute aimed primarily at the use of force and violence vests police with unfettered discretion. Certainly, the interest of the state in preserving the peace requires that police have the discretion to arrest those who utilize force and violence. Thus, the discretion vested in the police by this provision seems to be the type of narrow discretion which the Supreme Court has recognized as the proper role of responsible officials in making determinations concerning the imminence of disorder.[75] In addition, the applicability of this provision is further limited by the phrase "mob action which shall by violence inflict injury to the person or property of another." This phrase restricts the proper exercise of police discretion under this section to those situations in which violence has already erupted. We conclude, therefore, that this provision is sufficiently narrow and specific.

Subsection (d) similarly provides penalties in regard to "any participant in a mob action who does not withdraw on being commanded to do so by any peace officer." *Amici curiae* have also challenged the clarity and scope of this provision, pointing again to the inclusion of the word "participant" and suggesting that it is too vague and

74. The incorporation in the Mob Action statute of these requisite mental states by reference would not seem defective to the clarity of this statute. The regulatory system established by these five statutes is not so formidably elaborate and complex as to discourage expression by minority groups through fear of a regulatory imbroglio. *See* Note 80 Harv. L. Rev. 1773, 1778 (1967). This situation is a far cry different from that in *Keyishian* v. *Board of Regents*, 385 U. S. 589 (1967), where the appellants were confronted by several statutes, numerous regulations and intricate administrative machinery regarding teacher loyalty oaths.

75. *See Chaplinsky* v. *New Hampshire*, 315 U. S. 568, 573 (1942). *Cf. New York* v. *Feiner*, 340 U. S. 315 (1951).

broad. As stated above, the requisite mental states which have been incorporated by reference into this provision sufficiently clarify and narrow its scope and preclude its application to peaceful participants or innocent bystanders. The additional requirement of a refusal to withdraw does not subvert this conclusion.[76] On the contrary, it further limits the scope of the enactment as a whole, and the discretion of those charged with its enforcement. It is clear, therefore, that this provision cannot be challenged on these grounds.

Lest there be any doubt concerning what we conceive to be the narrow scope of this section as properly interpreted, it does not constitute an offense hereunder for a participant in a peaceful demonstration to refuse to withdraw on command of a peace officer. Peaceful demonstrations do not constitute "mob action" under the statute.

THE RESISTING OR OBSTRUCTING A PEACE OFFICER STATUTE.

Plaintiffs also contend that the Illinois "Resisting Arrest" statute, Ill. Rev. Stat. ch. 38, § 31-1, is void both for reasons of vagueness and overbreadth. It provides:

> A person who knowingly resists or obstructs the performance by one known to the person to be a peace officer of any authorized act within his official capacity shall be fined not to exceed $500 or imprisoned in a penal institution other than a penitentiary not to exceed one year, or both.

This statute has likewise not been construed by the Illinois Courts. We must, therefore, again place our own construction upon it, giving the words their reasonable and natural construction.

76. Indeed, in *Cox* v. *Louisiana*, the Supreme Court indicated that such a withdrawal provision is constitutionally permissible if embodied in a statute which is otherwise sufficiently narrow and precise and which protects a justifiable state interest. *See* 379 U. S. at 551.

This statute is designed to deter a person from resisting or interfering with the acts of law enforcement officials, simply on the basis of the person's own conclusion as to the impropriety of the act. It thus furthers the legitimate state interest in protecting peace officers, preventing frustration of the valid enforcement of the law, and promoting orderly and peaceful resolution of disputes.[77] It is obvious, therefore, that this statute is not directed at peaceful assembly. Its enforcement, at times, may conflict with assembly, but in such instances, the public interest in discouraging violence and insisting upon the use of peaceful methods of obtaining redress from unlawful acts outweighs the recognition of the feelings of the demonstrators.[78]

The gist of the offense is "resisting" or "obstructing" the valid acts of a peace officer. These terms convey commonly recognized meanings. "Resisting" or "resistance" means "withstanding the force or effect of" or the "exertion of oneself to counteract or defeat."[79] "Obstruct" means "to be or come in the way of."[80] These terms are alike in that they imply some physical act or exertion. Given a reasonable and natural construction, these terms do not proscribe mere argument with a policeman about the validity of an arrest or other police action, but proscribe only some physical act which imposes an obstacle which may impede, hinder, interrupt, prevent, or delay the performance of the officer's duties, such as going limp, forcefully resisting arrest or physically aiding a third party to avoid arrest.[81]

77. *Cf.* Warner, *The Uniform Arrest Act,* 28 Va. L. Rev. 316 (1942).

78. *Cf.* Warner, *supra* note 77 at 330-31.

79. Webster, New International Dictionary n. 1 & 2 (3d ed. 1964 Unabridged).

80. Webster, New International Dictionary n. 2 (3d ed. 1964 Unabridged).

81. *Cf.* In Re Bacon, 49 Cal. Rptr. 322, 333 (1st Dist. 1966).

The statute further requires that the person resists or obstructs "knowingly" and that the officer be in the performance of an "authorized act within his official capacity." The term "knowingly" is specifically defined in the Criminal Code.[82] It considerably narrows the scope of the enactment by exempting innocent or inadvertent conduct from its proscription. The term "authorized act," although not specifically defined in the Code, is not so obscure that men of common intelligence would differ as to its import. "Authorize" is defined as "to endow with authority or effective legal power, warrant, or right."[83] In the context of the statute the phrase "authorized act," given a reasonable and natural construction, means the legal or legally effective acts of an officer.[84] This phrase thus narrows the scope of the offense still further to include only resistance or obstruction of the legal acts of police and other officers.[85] For instance, resistance to an illegal search and seizure would not be proscribed.

Nevertheless, plaintiffs contend that the statute permits police to exercise wholly arbitrary and capricious discretion in regard to group assemblies. Under the language of this statute, they argue, a peace officer need only decree on the spot that the most peaceful assembly be

82. *See* note 72 *supra*.

83. Webster, New International Dictionary n. 4 (3d ed. 1964 Unabridged).

84. *Cf.* Ill. Rev. Stat. Ann. ch. 38, § 31-1 (Smith-Hurd 1964) (Committee Comments). An analogous United States statute describing "Assault on a Process Server," 18 U. S. C. § 1501, has been similarly construed to prohibit only resistance or obstruction of a law officer while in the performance of a legally effective act. *See, e.g., Sparks* v. *United States*, 90 F. 2d 61 (6th Cir. 1937); *Briggs* v. *United States*, 24 F. 2d 961 (9th Cir. 1924).

85. There is an exception to this rule in another section of the Illinois Criminal Code. If the act which is resisted or obstructed is the making of an arrest, a private person is not authorized to resist such arrest with force even though he knows the arrest is unlawful. *See* Ill. Rev. Stat. ch. 38, § 7-7 (1967). *See, also,* Ill. Rev. Stat. Ann. ch. 38, § 31-1 (Smith-Hurd 1964) (Committee Comments).

broken up and any failure on the part of a citizen to comply with such an order subjects him to the penalties of this statute. They contend that the *in terrorem* effect on the right of peaceful assembly arising from the potential misapplication of this statute requires, therefore, that it be declared unconstitutional.

This argument is unpersuasive for two reasons. First, the plaintiffs have not given the statute a reasonable construction. It does not proscribe resisting or obstructing an unlawful act of a peace officer. The guilt or innocence of the defendant specifically depends on the validity of the officer's act. Therefore, if a policeman erroneously, capriciously, or arbitrarily orders peaceful demonstrators to disperse, acts of resistance or obstruction by the demonstrators would not subject them to criminal liability under this provision.

Second, the basis of plaintiffs' argument is not the scope of the enactment, but its possible misapplication. The constitutionality of a statute, however, is not dependent on its susceptibility of misapplication. For every statute is susceptible of abuse, misuse or misapplication. Rather, its validity depends on whether the language of the statute, given its normal meaning, is so broad that it intrudes upon Constitutional rights.[86] If the language is so broad that its sanctions may be applied indiscriminately to constitutionally protected conduct, as well as to conduct which may properly be proscribed, it violates substantive due process and, therefore, is unconstitutional.

The instant statute, however, does not contain such overreaching language. While admittedly, like any statute, it may be misapplied, its sanctions apply only to knowing physical resistance or obstruction of a valid act of a peace officer. These sanctions, therefore, do not ultimately de-

86. *See* authorities cited notes 41-43, *supra* and accompanying text.

pend on the subjective views of those charged with its enforcement. Consequently, we conclude that it is neither vague nor overbroad.

The Intimidation Statute.

Plaintiffs further attack the Illinois Intimidation Statute, Ill. Rev. Stat. ch. 38, § 12-6. Although none of the plaintiffs corrently face prosecution under this provision, they contend that it has a chilling effect on their exercise of First Amendment freedoms of speech, assembly, and petition, by reason of its vagueness and overbreadth. They fear that it will be used to punish them for threatening to engage in "direct action and protest activities" if political, economic, and social institutions do not meet their demands for an end to racial discrimination.

The statute provides:

> (a) A person commits intimidation when, with intent to cause another to perform or to omit the performance of any act, he communicates to another a threat to perform without lawful authority any of the following acts:
>
> (1) Inflict physical harm on the person threatened or any other person or on property; or
>
> (2) Subject any person to physical confinement or restraint; or
>
> (3) Commit any criminal offense; or
>
> (4) Accuse any person of an offense; or
>
> (5) Expose any person to hatred, contempt or ridicule; or
>
> (6) Take action as a public official against anyone or anything, or withhold official action, or cause such action or withholding; or
>
> (7) Bring about or continue a strike, boycott or other collective action.
>
> (b) Penalty. . . .

The statute is a section of the Illinois Criminal Code of 1961. According to a revisor's note, it replaces eighteen sections of the prior criminal code which proscribed an array of activities by private persons and public officials.[87] The Illinois Supreme and Appellate Courts have not had occasion to construe the statute, and in the posture of this case, we are without benefit of a lower state court's construction. Under these circumstances, we must again place our own construction upon it, giving words their reasonable and natural meaning.

This statute is an omnibus provision designed to prohibit all manner of threats and unlawful communications intended to compel a person to act against his will.[88] The State of Illinois unquestionably has a legitimate interest in protecting persons from coercion by threats, even deemed an abridgment of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed."[89] However, at the outset of this analysis it should be recognized that Illinois has no legitimate interest in proscribing as intimidation statements that have no reasonable tendency to coerce or statements which, although alarming, are not expressions of an intent to act.

Legitimate political expression intended to secure changes

87. *See* Ill. Rev. Stat. ch. 38, §§ 240-246, 376-383, 456-464 (1960 repealed).

88. It is supplemental to other sections of the Criminal Code of 1961, which proscribe theft by means of threat, Ill. Rev. Stat. ch. 38, §§ 16-1, 16-3 (1967), deceptive practices, Ill. Rev. Stat. ch. 38, § 17-1 (1967), and official misconduct, Ill. Rev. Stat. ch. 38, § 33-3 (1967). The latter, more specific statutes cover the common law crimes of extortion and blackmail.

89. *Giboney* v. *Empire Storage & Ice Co.*, 336 U. S. 490, 502 (1949). *See, also, Cox* v. *Louisiana*, 379 U. S. 559, 563 (1963); *Fox* v. *Washington*, 236 U. S. 273, 277 (1915); *Chaplinsky* v. *New Hampshire*, 315 U. S. 568, 571-72 (1942).

in a society's legal, political, social, or economic structure frequently takes the form of expressions about future events or conditions. Such expression may be in the form of promises, predictions or warnings, or threats of lawful action.

While we doubt that threats of the character proscribed by the Illinois Intimidation statute are legitimate forms of expression, the point at which legitimate expression becomes coercive expression of unlawful intent is not easily determined, especially in the heat of public debate. The freedoms of expression, however, are extremely vulnerable to excessive restriction. "The threat of sanctions may deter their exercise almost as potently as the actual application of sanctions. . . . Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity."[90] The necessity for such "breathing space" requires that only threats of substantial evil be proscribed.[91]

The elements of the offense of intimidation are set forth in paragraph (a). Seven sub-paragraphs specify various acts which may not be threatened if the elements of paragraph (a) are met.

There are three elements of the offense of intimidation defined in paragraph (a) of § 12-6. First, there must be a threat to perform without lawful authority one of the acts specified in the statute. Second, there must be a communication of the threat to another, not necessarily the person threatened. Third, there must be an accompanying intent to cause another to perform or omit the performance of an act.

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90. *N. A. A. C. P.* v. *Button*, 371 U. S. 415, 433 (1963). *See, also, New York Times Co.* v. *Sullivan*, 376 U. S. 254, 271-72 (1964); *Cantwell* v. *Connecticut*, 310 U. S. 296, 311 (1940).

91. *See, e.g., Dennis* v. *United States*, 341 U. S. 494, 507-510 (1951); *Martin* v. *Struthers*, 319 U. S. 141, 143-44 (1943); *Schneider* v. *State*, 308 U. S. 147, 161 (1939).

The term "threat" has a sinister and well-defined meaning in common parlance and in the law. It is "the expression of an intention to inflict evil or injury on another."[92] It is more than a mere expression of such an intent; it is "a menace; especially, any menace of such a nature and extent as to unsettle the mind of the person on whom it operates, and to take away from his acts that free and voluntary action which alone constitutes consent."[93] It is not the abstract meaning of words that constitute an expression a threat, but their reasonable tendency under the circumstances to place another in fear that the threat-maker will perform the threatened act. An innocent expression may be threatening because of the ominous circumstances in which it is made. Similarly, a statement that is literally a declaration of intent to do harm to another is not a threat if the context negatives any reasonable apprehension that the speaker intends what he says he intends.

Implicit in the word "threat", as it is used in a criminal statute, is this requirement: that the expression in its context have a reasonable tendency to create apprehension that its originator will act according to its tenor.

We find this implicit in the Illinois Intimidation Statute. The Illinois Appellate Court placed such a construction on the word "threat" in an extortion statute which § 12-6 replaced.[94]

The statute does not prohibit every threat communicated with the required intent, but only those to perform "without lawful authority" any of seven specified acts. "Authority" is defined as "legal or rightful power; a right to command or to act; power exercised by a person in virtue of his

92. Webster, New International Dictionary, n. 1a (3d ed. 1964 Unabridged).

93. Black, Law Dictionary (4th ed. 1951).

94. *See Moore* v. *People*, 69 Ill. App. 398, 401 (1896).

office or trust; dominion; jurisdiction; authorization.''[95] In the broad sense of this definition lawful authority is the legal right or power to act. In the narrow sense it is the official power or jurisdiction to act.

The private citizen has lawful authority in the broad sense to perform most of those acts specified in the Illinois Intimidation Statute under certain circumstances. He is sometimes justified in using force against another,[96] or in physically restraining another.[97] He has the power to initiate criminal prosecution against another and the right to give information and testimony against another. He may make statements injurious to another's reputation, provided he does not commit defamation. He may engage in collective action in all save a few forms.

If ''lawful authority'' is confined to the narrow meaning of official power conferred by law, the private citizen, by definition a person without official power, has no ''authority'' to perform any of the acts specified in the intimidation statute. Placing such a meaning on the phrase ''lawful authority'' in the statute would result in an unreasonable and unnatural construction. Such a construction would make criminal the threat to do lawful acts, including acts expressly permitted by the Criminal Code, in the most legitimate circumstances. It would, for example, make criminal a threat to use justified force in defense of person or property and a threat to file legitimate criminal charges.

Given a reasonable and natural construction, the statute prohibits only threats to do any of the specified acts if the doing of that act would be unlawful considering the circumstances existing when the threat is made and giving effect to the qualifications contained in the threat. The

95. Webster, New International Dictionary n. 1 (3d ed. 1964 Unabridged).

96. *See* Ill. Rev. Stat. ch. 38, Art. 7 (1967).

97. *See* Ill. Rev. Stat. ch. 38, §§ 7-6, 7-9, 10-3 (1967).

phrase "without lawful authority" is not limited to criminal illegality; an act without lawful authority may be either a crime or a tort, or both. The statute therefore refers to some of the provisions of Illinois criminal and civil law. In this respect the offense of intimidation resembles the inchoate offenses of solicitation, conspiracy, and attempt, which refer to other provisions of the criminal law.[98]

Since the statute incorporates some of the provisions of criminal and civil law, all the defenses that would have been available to the accused if he had carried out his threat and had been prosecuted or sued for doing so are available to him in a prosecution for intimidation.[99] This is implicit in the statute and consistent with that section of the Illinois Criminal Code which provides: "It is a defense to a charge of solicitation or conspiracy that if the criminal object were achieved the accused would not be guilty of an offense." Ill. Rev. Stat. ch. 38, § 8-3 (1967).

The remainder of paragraph (a) requires little interpretation. The required state of mind is an intent to cause another to act or refrain from acting by inducing fear that the threat will be carried out if he does not act or refrain. The required communication may be by any means.

Sub-paragraph (a)(1) prohibits threats to "inflict physical harm on the person threatened or any other person or, on property [without lawful authority]". The infliction of physical harm on another or on property is always unlawful, unless it is justified in defense of person or property or in protection of public health, safety, welfare or morals. The situations in which force may be used against another

98. *See* Ill. Rev. Stat. ch. 38, art. 8 (1967).

99. There is an obvious exception. He could not defend on the ground that performance of the threatened act was impossible because of some fact unknown to the person threatened. *Cf.* Ill. Rev. Stat. ch. 38, § 8-4(b) (1967).

are defined in the Criminal Code.[100] It is readily apparent, therefore, that a threat to inflict physical harm on another or on property, when communicated with intent to coerce, would violate the intimidation statute unless the use of the force threatened would be justified. Similarly, it cannot be said that threats of physical harm to person or property are an insubstantial evil. Indeed, principles of individual liberty require that persons be protected from the apprehension engendered by such threats. This provision, therefore, is neither vague nor overbroad.

Sub-paragraph (a)(2) makes criminal threats to "subject any person to physical confinement or restraint [without lawful authority]." The limits of lawful authority to confine and restrain another are found in the law governing criminal procedure, the law of guardian and ward, domestic relations law, and certain health laws. The private citizen is seldom justified in restraining another.[101] It is thus apparent that unless such justification exists, or would exist if the qualifications in the threat were given effect, a threat to restrain or confine another is intimidation. This proscription is obvious to men of common intelligence.

Likewise, it is not overreaching. Threats of false imprisonment or unlawful restraint pose a substantial evil which the state has a legitimate interest in preventing. Given its reasonable and natural construction, the phrase "without lawful authority" excepts threats to restrain in situations where the law recognizes justifiable restraint. This provision's scope, therefore, is narrow and precise.

Sub-paragraph (a)(3) prohibits threats to "commit any criminal offense." The qualifying phrase, "without lawful authority," is redundant as applied to this sub-paragraph, since a criminal offense, by definition cannot be committed

100. *See* Ill. Rev. Stat. ch. 38, §§ 7-6, 7-9, 10-1, 10-2, 10-3 (1967).

101. *See* Ill. Rev. Stat. ch. 38, §§ 7-6, 7-9, 10-1, 10-2, 10-3 (1967).

with lawful authority. The word "offsense" is defined in the Illinois Criminal Code as meaning "a violation of any penal statute of this State."[102] Consequently, the sub-paragraph makes criminal threats to violate any Illinois statute imposing a penalty. The addition of the adjective "criminal" does not narrow the meaning of this provision.

The provision is not vague. It is, however, overbroad since it prohibits threats of insubstantial evil. The commission of criminal offenses against persons or property is a substantial evil, and the state may legitimately proscribe the making of threats to commit such offenses. The commission of offenses against public order *only*, however, is not such a substantial evil that the state may prohibit the threat of it. Sub-paragraph (a)(3) proscribes threats to violate *any* penal statute. It therefore makes criminal threats such as the following: (1) threats by dissentient groups to engage in disorderly conduct,[103] threats by residents of a high-crime neighborhood to carry concealed weapons for their own protection,[104] and threats by mothers to block a dangerous state highway to demonstrate the need for increased safety measures.[105] Indeed, the phrase "commit any criminal offense" is so broad as to include threats to commit misdemeanors punishable by fine only. These evils are not so substantial that the state's interest in prohibiting the threat of them outweighs the public interest in giving legitimate political discussion a wide berth.

Since the language of sub-paragraph (a) (3) is an overbroad restriction on freedom of speech, it is invalid. Obviously, however, if the threat is carried out, the persons who violate the criminal law by their acts are subject to

102. *See* Ill. Rev. Stat. ch. 38, § 2-12 (1967).
103. *See* Ill. Rev. Stat. ch. 38, § 26-1 (1967).
104. *See* Ill. Rev. Stat. ch. 38, § 24-1(4) (1967).
105. *See* Ill. Rev. Stat. ch. 95½, § 197 (1958).

punishment. Therefore, we hold only that making it an offense to threaten to commit any crime, no matter how minor or insubstantial, is an unwarranted limitation.

Sub-paragraph (a) (4) prohibits threats to "accuse any person of an offense [without lawful authority]." "Accuse . . . of an offense" has both a technical and a non-technical meaning. In its technical sense it means "to bring a formal charge . . . before a court or magistrate having jurisdiction to inquire into the alleged crime."[106] In its non-technical sense it means to make allegations that another has committed an offense. Such an allegation made only in the presence of the person accused would not be coercive, and a threat to unlawfully publish such an allegation would fall within sub-paragraph (a) (5). For these reasons, we believe the phrase should be given its technical meaning in sub-paragraph (a) (4).

The filing of a criminal charge against another is "without lawful authority" only if the person accused is innocent of the charge and the accuser acts with malice and without probable cause to suspect that the accused committed the crime.[107] The threat to accuse another of an offense violates the intimidation statute only if the person threatened is innocent and the threat-maker, at the time he communicates the threat, had no reasonable grounds for his suspicion. Malice can be inferred from the threat-maker's intent to coerce another by inducing a fear of prosecution.

This provision is neither vague nor overbroad. It clearly proscribes only threats of false, malicious, and unfounded prosecution. Such threats are well outside the ambit of protected speech.

Sub-paragraph (a)(5) makes criminal threats to "expose another to hatred, contempt or ridicule [without lawful

106. Black, Law Dictionary (4th ed. 1951).

107. *See Cowper* v. *Vannier*, 20 Ill. App. 2d 499, 500-01 (1959).

authority]." This phrase is taken from the definition of libel and slander.[108] The exposure of another to hatred, contempt or ridicule is unlawful when it constitutes libel, slander, invasion of privacy, or criminal libel. In a prosecution for violation of this sub-paragraph the state would be required to prove, in addition to the other elements of the intimidation statute, that the threat-maker's execution of his threat would have constituted one of those torts or crimes *given his state of mind and the circumstances existing at the time the threat was made.* For example, if the person whose exposure was threatened were a public official and the threatened statements related to his official conduct, the state would be required to prove that the threat-maker knew the statements were false or did not know whether they were true or false.[109] This sub-paragraph is neither vague nor overbroad. It proscribes threats to defame and certain threats to invade privacy. Considering federal constitutional limitations on the law of libel and slander, particularly where public officials are concerned, such threats are not protected. Nor is their protection essential to the protection of legitimate political expression.

Sub-paragraph (a) (6) prohibits two forms of threats. First, it prohibits threats to "take action as a public official against anyone or anything, or withhold official action [without lawful authority]." The Illinois Criminal Code defines "public officer" as "a person who is elected to office pursuant to statute, or who is appointed to an office which is established, and the qualifications and duties of which are prescribed by statute, to discharge a public duty for the State or any of its political subdivisions,"[110] and

108. *See New York Times* v. *Sullivan,* 376 U. S. 254, 279-80 (1964).

109. *See New York Times* v. *Sullivan,* 376 U. S. 254, 279-80 (1964).

110. Ill. Rev. Stat. ch. 38, § 2-18 (1967).

defines "public employee" as "a person, other than a public officer, who is authorized to perform any official function on behalf of, and is paid by, the State or any of its political subdivisions."[111] In using the term "public official" in the intimidation statute, the legislature apparently intended to reach both public officers and public employees. This construction of the term "public official" is consistent with the definition of "official" in the Criminal Code's article prohibiting civil rights violations.[112] Consistent with these definitions, the term "official action" must be construed to mean any governmental action, ministerial as well as discretionary. The sub-paragraph therefore prohibits any threat made by a public officer or employee to take or withhold governmental action.

Second, the sub-paragraph prohibits threats to "cause [without lawful authority] such action or withholding." "[S]uch action or withholding" refers to a public officer's or public employee's taking or withholding of governmental action. The verb "cause" when used to define the intent element of the offense of intimidation has a definite meaning. Its context there gives it an active, positive connotation. Similarly, when used in sub-paragraph (a) (6) to define one of the acts which may not be threatened, its meaning is certain. It has an active, positive connotation to effect, to compel, to take action, to bring about.

The state has a legitimate and substantial interest in precluding public officials or persons purportedly influential with public officials from threatening official action or the withholding thereof for the purpose of inducing the person threatened to take some action desired by the public official or one purporting to have influence with a public official. Nor, as we have indicated, are threats generally within First Amendment protection.

---

111. Ill. Rev. Stat. ch. 38, § 2-17 (1967).

112. *See* Ill. Rev. Stat. ch. 38, § 13-1(c) (1967).

In our reading of this sub-paragraph, we do not interpret it to include threats by one public official or employee to another, but rather only threats by public officials or persons associated with them to individuals outside the area of government who are unable to protect themselves from abuse of official authority or power and may therefore be coerced or intimidated by such threats.

In the light of all of the foregoing, we conclude that sub-paragraph (a) (6) is valid.

Sub-paragraph (a) (7) makes criminal threats to "bring about or continue a strike, boycott or other collective action [without lawful authority]." While the terms "bring about" and "collective action" are not crystal clear, they are not so vague and indefinite that persons of normal intelligence will have difficulty in understanding their meaning. The remaining language of the sub-paragraph is quite clear. It prohibits threats to unlawfully continue strikes or boycotts. It is unlawful to continue a strike or boycott only if the strike or boycott is unlawful. They are unlawful in certain circumstances by virtue of the National Labor Relations Act,[113] state labor statutes, and state and federal trade regulation laws. They also may be unlawful because of the means by which they are pursued.

Prohibiting the use of threats to cause or continue unlawful strikes, boycotts or similar action in order to coerce or intimidate persons to perform or omit the performance of acts which the person threatening desires to have performed or omitted is within the police power of the state. Nor is such a threat within First Amendment protection.

We recognize that the conclusion of validity may inhibit the making of threats which some persons may deem desirable, e.g., the threat of a teachers' strike which would be an unlawful strike under Illinois law. We do not deter-

113. 29 U. S. C. A. §§ 151 et seq.

mine that the sub-paragraph in question would even be applicable to such a threat. Nor do we seek to determine its constitutionality under any and all circumstances. We hold simply that given a legitimate state interest, statutory language understandable by persons of common intelligence and no impingement on protected activity, the provision is valid. Its possible unconstitutional application in a given factual situation we leave to that case when and if it ever arises.

Amici curiae have argued that the statute generally is impermissibly vague because it refers to other provisions of criminal and civil law that may be vague. The reference to other provisions of criminal and civil law is not for the purpose of explaining vague language in the instant statute,[114] but for the purpose of defining the acts which may not be threatened. The argument advanced by *amici curiae* would deny the state the power to prohibit intimidation and the inchoate offenses except by a compendious statute. This is neither practical nor constitutionally required.

We recognize that the intimidation statute does not furnish a definite standard to the extent that the provisions of criminal and civil law referred to may be vague. The constitutional infirmity resides in those provisions, however, not in the intimidation statute, and the proper remedy is clarification or invalidation of them.

114. *Cf.* ***Keyishian*** v. ***Board of Regents***, 385 U.S. 589, 604 (1967).

Conclusion.

In conclusion, a few general observations which are relevant to our opinion and decision here should be made explicit although they are implicit therein.

First, a presumption of validity attaches to legislative enactments.[115]

Second, if the normal and natural construction of statutory language or even a narrow interpretation thereof will preserve the constitutionality of a statute, it must be sustained.[116]

Third, only if the statutory language is so vague and indefinite that men of common intelligence will not be able to understand it and regulate their conduct accordingly, or if in its normal and natural meaning it is overbroad and proscribes conduct constitutionally protected, may it be held unconstitutional and void.[117]

Fourth, the fact that a statute may be misapplied, misused or abused does not render the statute invalid; self-enforcing or foolproof laws have not yet been invented.

Fifth, the interpretation of a state statute by a lower federal court is not necessarily binding on the state courts, though the two sections of the Illinois Criminal Code which we have found to be invalid appear to us to be clearly unconstitutional.

Finally, we would make two related observations. The declaration of validity and constitutionality here made

115. *See, e.g., Goldblatt* v. *Town of Hempstead*, 369 U. S. 590, 595-96 (1961); *Flemming* v. *Nestor*, 363 U. S. 603, 611 (1960); *Sabel* v. *Adams*, 208 F. Supp. 316, 324 (S. D. Fla. 1962).

116. *See, e.g., Chaplinsky* v. *New Hampshire*, 315 U. S. 568 (1942); *Cox* v. *New Hampshire*, 312 U. S. 569 (1941); *Cf. Harris* v. *United States*, 347 U. S. 612 (1954).

117. See authorities cited notes 38-43 *supra* and accompanying text.

with respect to the various statutes is predicated on the construction and interpretation of each set forth herein. To the extent that the state courts may make other and broader interpretations or constructions, the holdings here would necessarily be subject to reexamination.

Conversely, we recognize that while we have held these statutes to be valid as we construe and interpret them, their application in specific instances may give rise to further constitutional questions. No declaratory judgment as to the constitutionality of a statute can anticipate and determine all future cases which may arise thereunder. We have endeavored to delineate guidelines of construction and interpretation which balance the legitimate interest and duty of the state to preserve the peace, and the constitutionally protected rights of free speech, peaceful assembly and peaceful demonstration guaranteed by the First Amendment to every citizen. Inevitably, in practical application, futher questions will arise.

Judgment will be entered in accordance with the declarations and conclusions reached herein.

JUDGMENT ORDER.

The above cause came on regularly for hearing before the Court on January 27, 1968, and was duly submitted for consideration and decision, and the Court on the 1st day of March, 1968, made its decision, and filed its memorandum opinion. Now, therefore, pursuant thereto,

IT IS HEREBY ORDERED AND DECREED BY THE COURT AS FOLLOWS:

1. That sub-section (a) (2) of Ill. Rev. Stat. ch. 38, § 25-1 (1967), which defines and proscribes the penal offense of "Mob Action" is hereby declared unconstitutional, null, and void in that it violates the due process clause of the Fourteenth Amendment of the Constitution of the United States.

2. That the remainder of Ill. Rev. Stat. ch. 38, § 25-1 (1967), which defines and proscribes the penal offense of "Mob Action" and which fixes the penalties therefor, is consistent with the due process clause of the Fourteenth Amendment of the Constitution of the United States and therefore valid.

3. That Ill. Rev. Stat. ch. 38, § 31-1 (1967), which defines and proscribes the penal offense of "Resisting or Obstructing a Peace Officer" and fixes the penalty therefor is consistent with the due process clause of the Fourteenth Amendment of the Constitution of the United States and valid.

4. That sub-section (a) (3), of Ill. Rev. Stat. ch. 38, § 12-6 (1967), which defines and proscribes the penal offense of "Intimidation" is hereby declared unconstitutional, null and void in that they violate the due process clause of the Fourteenth Amendment of the Constitution of the United States.

5. That the remainder of Ill. Rev. Stat. ch. 38, § 12-6 (1967), which defines and proscribes the penal offense of "Intimidation" and which fixes the penalty thereon is consistent with the due process clause of the Fourteenth Amendment of the Constitution of the United States and therefore valid.

6. The Court retains jurisdiction of this action to determine the other claims raised in the complaint and to render additional relief if necessary.

Dated at Chicago, Illinois, this 1st day of March, 1968.

JOHN S. HASTINGS,
United States Circuit Judge.

JULIUS J. HOFFMAN,
United States District Judge.

HUBERT L. WILL,
United States District Judge.

IN THE UNITED STATES DISTRICT COURT.

Northern District of Illinois,

Eastern Division.

LAWRENCE LANDRY, ROMMELL MULLER, JOSEPH H. REYNOLDS, DAVID A. REYNOLDS, JAMES WASHINGTON, FRANK DITTO, ROBERT LUCAS, ROBERT BROWN, MICHAEL ROGERS, BERNARD HUGHES, ARNOLD FORD, VISSA MARIE TURNER, WYSINGO TURNER, ANDREW BROWN, CHARLES FLETCHER, JAMES JONES, HERMAN TOWNSEND, JEROME PARKER, RUDY HOOPER, and ACT, an unincorporated association,

Plaintiffs.

vs.

RICHARD J. DALEY, Mayor of the City of Chicago, Cook County, Illinois; JAMES CONLISK, Superintendent of Police of the City of Chicago, Illinois; JOHN S. BOYLE, Chief Judge of the Circuit Court of Cook County, Illinois; JOHN J. STAMOS, State's Attorney of Cook County, Illinois; RAYMOND F. SIMON, Corporation Counsel of the City of Chicago, Illinois; JOSEPH I. WOODS, Sheriff of Cook County, Illinois; RICHARD J. ELROD, Assistant Corporation Counsel, City of Chicago, Division of Ordinance Enforcement; MAURICE W. LEE, Magistrate, Circuit Court of Cook County, Illinois; JOHN S. LIMPERIS, Magistrate, Circuit Court of Cook County, Illinois; JOHN T. BURKE, JOSEPH RATKVICH and ROBERT KULOVITZ, Police Officers of the City of Chicago,

Defendants.

67 C 1863.

DECREE FOR PERMANENT INJUNCTION.

This cause having come on to be heard by a Three-Judge Court pursuant to 28 U. S. C. 2281 and 2284, counsel for the plaintiffs and defendants having been fully heard, and the Court having examined the briefs filed by the respective parties, and having filed herein its findings of fact, conclusions of law and declaratory judgment on March 4, 1968, declaring that ch. 38, § 25-1 (a) (2), and ch. 38, § 12-6 (a) (3), Ill. Rev. Stat. 1967, are unconstitutional and void, and having directed that judgment be entered in accordance therewith; now therefore, by reason of the law and findings aforesaid,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the defendants, their employees, servants, and agents, be and they are hereby perpetually enjoined and restrained from the enforcement of or the prosecution under ch. 38, § 25-1 (a) (2) and ch. 38, § 12-6 (a) (3), Ill. Rev. Stat. 1967, said sub-sections having been declared unconstitutional and void.

Dated this 2nd day of April, A. D. 1968.

ENTER:

JOHN S. HASTINGS,
JULIUS HOFFMAN,
HUBERT WILL,
Judges of the United States District Court, Northern District, Eastern Division.

Supreme Court of the United States

No. 244 --- , *October Term, 19* 68

John S. Boyle, Chief Judge of the
Circuit Court of Cook County,
Illinois, et al.,

Appellants,

v.

Lawrence Landry, et al.

APPEAL from the United States District Court for the Northern District of Illinois.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar.

December 9, 1968

FILE COPY

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JUN 28 1968
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967.

No. 74

JOHN S. BOYLE, CHIEF JUDGE OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS; JOHN J. STAMOS, STATE'S ATTORNEY OF COOK COUNTY, ILLINOIS; JOSEPH I. WOODS, SHERIFF OF COOK COUNTY, ILLINOIS; MAURICE W. LEE AND JOHN S. LIMPERIS, MAGISTRATES OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS,

Appellants,

vs.

LAWRENCE LANDRY, ROMMELL MULLER, JOSEPH H. REYNOLDS, DAVID A. REYNOLDS, JAMES WASHINGTON, FRANK DITTO, ROBERT LUCAS, ROBERT BROWN, MICHAEL ROGERS, BERNARD HUGHES, ARNOLD FORD, VISSA MARIE TURNER, WYSINGO TURNER, ANDREW BROWN, CHARLES FLETCHER, JAMES JONES, HERMAN TOWNSEND, JEROME PARKER, RUDY HOOPER, AND ACT, AN UNINCORPORATED ASSOCIATION,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

JURISDICTIONAL STATEMENT.

JOHN J. STAMOS,
State's Attorney of Cook County, Illinois.

EDWARD J. HLADIS,
Chief of Civil Division,

RONALD BUTLER,
Assistant State's Attorney,

500 Chicago Civic Center,
Chicago, Illinois 60602,
Attorneys for Appellants.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967.

No. .....

JOHN S. BOYLE, CHIEF JUDGE OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS; JOHN J. STAMOS, STATE'S ATTORNEY OF COOK COUNTY, ILLINOIS; JOSEPH I. WOODS, SHERIFF OF COOK COUNTY, ILLINOIS; MAURICE W. LEE AND JOHN S. LIMPERIS, MAGISTRATES OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS,

Appellants,

vs.

LAWRENCE LANDRY, ROMMELL MULLER, JOSEPH H. REYNOLDS, DAVID A. REYNOLDS, JAMES WASHINGTON, FRANK DITTO, ROBERT LUCAS, ROBERT BROWN, MICHAEL ROGERS, BERNARD HUGHES, ARNOLD FORD, VISSA MARIE TURNER, WYSINGO TURNER, ANDREW BROWN, CHARLES FLETCHER, JAMES JONES, HERMAN TOWNSEND, JEROME PARKER, RUDY HOOPER, AND ACT, AN UNINCORPORATED ASSOCIATION,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

JURISDICTIONAL STATEMENT.

Appellants appeal from the decree of a Three Judge Court in the United States District Court for the Northern District of Illinois, Eastern Division, entered on April 2, 1968. This decree permanently enjoins the defendants from the enforcement or the prosecution of Chapter 38,

Section 25-1(a)(2) and Chapter 38, Section 12-6(a)(3), Illinois Revised Statutes, 1967. This appeal is prosecuted by John S. Boyle, Chief Judge of the Circuit Court of Cook County, Illinois, John J. Stamos, State's Attorney of Cook County, Illinois, Joseph I. Woods, Sheriff of Cook County, Illinois, Maurice W. Lee and John S. Limperis, Magistrates of the Circuit Court of Cook County, Illinois, certain defendants below and appellants herein, to review that portion of the Decree for Permanent Injunction which perpetually enjoins and restrains the aforesaid defendants from the enforcement or the prosecution of Chapter 38, Section 12-6(a)(3), Illinois Revised Statutes, 1967. The appellants submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINION BELOW.

The Opinion of the Three Judge Court for the Northern District of Illinois, Eastern Division, is reported in 280 F. Supp. 938. Copies of the Judgment Order, Opinion, Decree for Permanent Injunction, and the Notice of Appeal, are attached hereto as Appendix A (*post*, pp. A1-A51). On December 28, 1967, one of the District Judges overruled the Motion of these appellants to dismiss the proceeding and his Opinion is reported in 280 F. Supp. 929. For the convenience of the Court, the Complaint, Motion to Dismiss, the Opinion of December 28, 1967, and the Answer of these appellants are attached hereto as Appendix B (*post*, pp. A52-A102).

JURISDICTION.

This suit was brought by the appellees under 28 U. S. C., Sections 1331, 1332, 1343 (3) and (4), 2201, 2202, 2281, 2284; 42 U. S. C., Sections 1981, 1983, and 1985; and the

Constitution of the United States and more particularly the First, Fourth, Fifth, Sixth, Eighth, Tenth, Thirteenth, Fourteenth, and Fifteenth Amendments thereto. The suit was prosecuted to challenge the constitutional validity of numerous sections of the Illinois Criminal Code of 1961 as amended, namely: Chapter 38, Sections 25-1(a)(1) and (2), which proscribes mob action; Chapter 38, Section 31-1, which relates to the offense of resisting arrest; Chapter 38, Sections 12-2, 12-4, and 12-6, which proscribe aggravated assault and aggravated battery and intimidation, respectively. The complaint also questioned the constitutional validity of these statutes as they were being applied to the plaintiffs. The Opinion and a Judgment Order of the Three Judge Court were entered on March 1, 1968. A Decree for Permanent Injunction was entered on April 2, 1968. A Notice of Appeal which seeks to review that portion of the injunctive decree which enjoins the enforcement and prosecution of Chapter 38, Section 12-6(a)(3), was filed on behalf of the aforesaid appellants on April 3, 1968. On April 5, 1968, the appellees filed their notice of cross-appeal to the Supreme Court of the United States. By an order entered by the Honorable Justice Thurgood Marshall on June 6, 1968, the time to file the record and to docket the appeal has been extended to and including July 1, 1968. The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 28 United States Code, Sections 1253, 2281. The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *Zwicker* v. *Boll*, 270 F. Supp. 131, affd. ..... U. S. ....., 573 Misc., May 21, 1968; *Cameron* v. *Johnson*, 390 U. S. 611; *Dombrowski* v. *Pfister*, 380 U. S. 480; *Zwickler* v. *Koota*, 389 U. S. 241; *Baggett* v. *Bullitt*, 377 U. S. 360.

The provisions of the statute involved in this appeal are cited as Chapter 38, Section 12-6(a)(3) and are found at

Page 1544, Volume 1, Illinois Revised Statutes, 1967. This section reads as follows:[1]

"12-6. § 12-6. INTIMIDATION). (a) *A person commits intimidation when, with intent to cause another to perform or to omit the performance of any act, he communicates to another a threat to perform without lawful authority any of the following acts:*

(1) Inflict physical harm on the person threatened or any other person or on property; or
(2) Subject any person to physical confinement or restraint; or
(3) *Commit any criminal offense;* or
(4) Accuse any person of an offense; or
(5) Expose any person to hatred, contempt or ridicule; or
(6) Take action as a public official against anyone or anything, or withhold official action, or cause such action or withholding; or
(7) Bring about or continue a strike, boycott or other collective action.

(b) Penalty.

A person convicted of intimidation shall be fined not to exceed $5000 or imprisoned in a penal institution other than the penitentiary not to exceed one year or in the penitentiary from one to five years, or both fined and imprisoned. As amended by act approved, April 21, 1965. L. 1965, p. 387."

QUESTIONS PRESENTED.

Is a State criminal extortion statute, which prohibits one from communicating a threat to commit a criminal offense against another, unconstitutional as being overbroad and, therefore, violative of the First Amendment to the Constitution of the United States, as applied to the states through the Fourteenth Amendment.

---

1. For purposes of clarity the entire section has been set forth. Only the italicized portion thereof is involved in this Appeal.

STATEMENT.

On October 26, 1967, the appellees, composed of seven sub-classes, filed a complaint in the United States District Court for the Northern District of Illinois, Eastern Division, against numerous officials of the City of Chicago and County of Cook (*post*, pp. A52-A78). The complaint challenged the constitutionality of certain sections of the Illinois Criminal Code of 1961, as amended, requested the convening of a Three Judge Court pursuant to 28 U. S. C. 2281 and 2284, and prayed for a temporary and permanent injunction to restrain the defendants from the enforcement and prosecution of the enumerated Illinois Statutes (*post*, pp. A67-A68). Five sub-classes of appellees to which reference is made in the complaint are composed of persons who were arrested under several of the challenged statutes prior to the institution of the suit in the Northern District of Illinois, Eastern Division, and whose prosecutions have been and are presently pending in the State courts of Illinois (*post*, pp. A53-A54). None of those persons, whose prosecutions are pending, has been arrested or charged with a violation of the Illinois Intimidation Statute (Chapter 38, Section 12-6, Illinois Revised Statutes, 1967). The complaint alleged that the provisions of the Illinois Criminal Code of 1961, as amended, specifically Chapter 38, Sections 25-1(a)(1)(2)(3); (Mob Violence); Chapter 38, Section 31-1 (Resisting Arrest); Chapter 38, section 12-2 (Aggravated Assault); Chapter 38, Section 12-4 (Aggravated Battery); and Chapter 38, section 12-6 (Intimidation) are void and illegal on their face and as applied to the appellees (*post*, pp. A64-A65).

Certain of the enumerated defendants, appellants herein, moved, on November 9, 1967, to strike and dismiss the complaint, to oppose the entry of a temporary injunction restraining the enforcement of the state criminal statutes

challenged, and to oppose the convening of a Three Judge Court (*post*, pp. A79-A82).

A single trial judge, Will, J., in an opinion dated December 28, 1967, denied the motion of the appellants to dismiss the cause, ordered the convening of a Three Judge Court to consider the constitutionality of the challenged state statutes, and held in abeyance the issue of the alleged unconstitutional application of the state statutes by appellants pending a determination of the threshold question of constitutionality (*post*, pp. A83-A97). The appellants agreed informally that all pending prosecutions of the named appellees for acts prior to the filing of the complaint be held in *status quo;* accordingly, there was no ruling made with respect to appellees' motion for temporary injunctive relief (*post*, p. A86, n. 2).

The cause was set for hearing before a Three Judge Court on January 26, 1968, pursuant to the provisions of 28 U. S. C. 2281, 2284. Appellants filed an answer and affirmative defense on January 19, 1968, which denied the material allegations of the complaint and affirmatively asserted, as regards the appellees' request for injunctive relief, the grounds of federal abstention as well as the prohibition embodied in 28 U. S. C. 2283, as reasons for denying such relief (*post*, pp. A98-A102).

On March 1, 1968, the panel of three judges issued an opinion declaring (1) the constitutional invalidity of certain sub-sections of the Illinois Criminal Code of 1961, as amended, namely, Chapter 38, Section 25-1(a)(2) and Chapter 38, Section 12-6(a)(3), Illinois Revised Statutes, 1967; (2) the constitutional validity of certain sub-sections of the Illinois Criminal Code of 1961, as amended, namely, Chapter 38, Section 25-1(a)(1)(3), Chapter 38, Section

31-1, and Chapter 38, Sections 12-6(a)(1)(2)(4)(5)(6)(7).[2] (*post*, pp. A1-A48).

The Court held, with respect to its declaration of constitutional invalidity of Chapter 38, Section 12-6(a)(3), Illinois Revised Statutes 1967, that, while the provision was not vague, and while the state may legitimately proscribe the making of threats to commit criminal offenses against persons or property, which conduct would constitute substantial evil, the statute is "overbroad since it prohibits threats of insubstantial evil" (*post*, p. A41). The Court further stated that "the commission of offenses against public order *only* (Emphasis of the Court), however, is not such a substantial evil that the state may prohibit the threat of it" (*post*, p. A41). The Court expressly held that the language of Chapter 38, Section 12-6(a)(3) constituted an overbroad restriction on freedom of speech because the proscription of insubstantial evil is outweighed by the public interest in giving legitimate political discussion a wide berth (*post*, p. A41).

The decree of permanent injunction, entered April 2, 1968, perpetually enjoined the appellants from the enforcement and the prosecution of Chapter 38, Section 12-6(a)(3), Illinois Revised Statutes, 1967 (*post*, p. A50). Notice of appeal was filed by appellants on April 3, 1968, together with a Stipulated Designation of Record (*post*, p. A51).

THE QUESTION IS SUBSTANTIAL.

The Court below held that the First Amendment to the Constitution of the United States, as applied through the Fourteenth Amendment, prohibits a state from proscribing intimidation by way of threats to commit a criminal

2. Plaintiffs have abandoned their challenge to the constitutionality of the Illinois "Aggravated Assault" and "Aggravated Battery" statutes. Chapter 38, Sections 12-2 and 12-4, Illinois Revised Statutes, 1967 (*post*, p. A5).

offense because such prohibition may include "insubstantial" as well as "substantial" evil. During the course of its opinion which declared Section 12-6 (a)(3) of the Illinois Criminal Code of 1961, as amended (Chapter 38, Section 12-6 (a) (3), Illinois Revised Statutes 1967) unconstitutional, the Three Judge Court made the following observation (*post*, p. 41):

> "It is, however, overbroad since it prohibits threats of insubstantial evil. The commission of criminal offenses against persons or property is a substantial evil and the state may legitimately proscribe the making of threats to commit such offenses. The commission of offenses against public order *only*, however, is not such a substantial evil that the state may prohibit the threat of it. Sub-paragraph (a) (3) proscribes threats to violate *any* penal statute. It, therefore, makes criminal threats such as the following: (1) Threats by dissentient groups to engage in disorderly conduct; (2) Threats by residents of a high-crime neighborhood to carry concealed weapons for their own protection; Threats by mothers to block a dangerous state highway to demonstrate the need for increased safety measures. Indeed, the phrase 'commit any criminal offense' is so broad as to include threats to commit misdemeanor punishable by fine only. These evils are not so substantial that the state's interest in prohibiting the threat of them outweighs the public interest in giving legitimate political discussion a wide berth.
>
> * * * * *
>
> Therefore, we hold only that making it an offense to threaten to commit any crime, no matter how minor or insubstantial, is an unwarranted limitation."

Therein, the Three Judge Court has expressed its premise upon which it bottoms its determination that the criminal statute in question is unconstitutional. Therein also lies the basic error of the Court. For the first time, to the knowledge of these appellants, a Court has expressly determined

that the scope and protection of the First Amendment has been so enlarged as to include within its ambit unlawful behavior which is only "a little bit illegal". There is no precedent for this assertion. This Court has consistently held that the protection afforded by the First Amendment does not embrace illegal conduct. Moreover, this Court has never distinguished between degrees of illegality in its application of First Amendment rights.

Fifty-three years ago, this Court denied a First Amendment challenge upon a statute of the State of Washington prohibiting the willful printing, publication, circulation, and distribution of any printed matter which advocated or encouraged the commission of any crime or breach of the peace. *Fox* v. *Washington*, 236 U. S. 273. Subsequently, this Court held that the utterance of "fighting words" was punishable and not subject to the protection of the First Amendment. *Chaplinsky* v. *New Hampshire*, 315 U. S. 568. There is, it seems, no distinct difference between the utterance of "fighting words", held criminally punishable, and the utterance of speech communicated in the form of a threat, which conduct the present statute under consideration seeks to prohibit. Indeed, conduct amounting to "threatening words" and the continuing fear which it instills upon the victims are far more menacing than mere "fighting words", because intimidation or extortion, by its very nature, connotes a more serious degree of harm to the person or his property.

In its analysis of First Amendment rights, privileges, and limitations, as they relate to civil rights demonstrators, this Court made the following pointed observation in *Cox* v. *Louisiana*, 379 U. S. 536, 555:

> "We reaffirm the statement of the Court in *Giboney* v. *Empire Storage & Ice Co.*, *supra*, at 502, that 'it has never been deemed an abridgment of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evi-

denced, or carried out by means of language, either spoken, written, or printed.' "

The First Amendment right of free speech does not provide the basis for any assumption "that people who want to propagandize protests or views have a constitutional right to do so whenever and however and wherever they please". That concept of constitutional law has been forthrightly rejected by this Court. *Adderley* v. *Florida*, 385 U. S. 39, 48.

The previous decisions of this Court, therefore, dealing with the balancing concept of prohibited conduct on the one hand, and the First Amendment free speech rights of individuals on the other, convey no clear demarcation other than a case by case approach. Such cases do clearly indicate, however, that the protection of illegal conduct, substantial or not, finds no haven within the purview of the First Amendment.

The statute under attack (*ante*, p. 4) does not seek to impinge upon lawful speech or lawful conduct. It seeks to restrain threats to commit a criminal offense. Such restriction does not interfere with the wide berth accorded legitimate political discussion or the propagandizing of one's own views. The acknowledgement by the Court that threats to violate the law are constitutionally protected free speech, because the degree of harm engendered does not rise above an invisible demarcation line of "substantiality," itself constitutes a novel, vague and overbroad extension of the principles of the First Amendment.

The Court below stated that the addition of the adjective "criminal" does not narrow the meaning of the statute in question since the word "offense" is defined in the Illinois Criminal Code as meaning "a violation of any penal statute of the state" (*post*, p. A-40). The Court further declared that the qualifying phrase, "without lawful

authority'' is redundant as applied to sub-paragraph (a) (3), since a criminal offense, by definition, cannot be committed with lawful authority (*post*, p. A-40). Appellants urge that two errors were committed by the court below in making such analysis—errors which, if applying the rule that statutes should be construed in such a way to avoid doubtful constitutional questions, needlessly invalidate a properly drawn statute designed to protect a valid State interest.

In the first place, the term ''without lawful authority'' and ''criminal'' are neither synonymous nor coextensive, the latter constituting merely one aspect of the former (*post*, p. A38). One need only refer to an *ultra vires* act to demonstrate that, while the act is ''without lawful authority'', it need not encompass the element of criminality. This distinction is essential since the term ''criminal'' was meant to further delimit the scope of the statute subject here to review.

In the second place, the Court erred in failing to give effect to the word ''criminal'' as it modified the word ''offense.'' The Court stated that ''the addition of the adjective criminal does not narrow the meaning of this provision'' (*post*, p. A-40). The Court then gave the phrase ''criminal offense'' the same scope as the word ''offense'' and declared that the definition of the work ''offense,'' being a violation of any penal statute, rendered this whole section overbroad. However, the Court could only reach this result by ignoring the general rule of statutory construction that all words of the statute are to be given their plain meaning. ''Criminal offense'' means an offense contained in the Criminal Code. Other offenses, being acts for which there is a penal sanction provided and found in other parts of the statutes, are referred to as ''quasi-criminal''. There are no offenses outside the Criminal Code which contain any language referring to that offense

as a criminal offense. The Criminal Code, by its very title, contains the compilation of criminal offenses.

The Three Judge Court recognized that "the State of Illinois has a valid interest in preventing a project which will breach its criminal laws" (*post*, p. A 22). They found the Mob Violence section vague because it did not limit itself to violation of criminal laws, but rather it used the language "unlawful acts." In drafting the present statute, the legislature did limit the scope of this statute to threats of "criminal offenses." The Three Judge Court was thus confronted with the exact limitation in the intimidation statute that it found lacking in mob violence statute. However, by ignoring this limitation, the Court arrived at a conclusion of overbreadth.

Should, however, the interpretation of the Court below, with respect to the scope of the statute, be essentially correct, it is the position of appellants that the provision is not reasonably susceptible to a claim of constitutional overbreadth.

A claim of overbreadth, as applied to a statute, will be sustained where the language of the statute, given its normal meaning, is so wide in scope as to apply to and prohibit conduct protected by the Constitution. *Zwickler* v. *Koota*, 389 U. S. 241, 250. This concept has been stated to have particular significance where the attack upon a statute on its face is supported by a claim of its repugnance to First Amendment freedoms. *Zwickler* v. *Koota*, 389 U. S. 241, 252.

Even if the interpretation of the provision in question is expanded to prohibit all threats of *any* penal statute of the State of Illinois, criminal and quasi-criminal, felonies and misdemeanors, offenses punishable by imprisonment or those offenses punishable by fine only, a challenge to its validity conditioned upon grounds of over-

breadth lacks one essential prerequisite. The scope of the statute only reaches *illegal conduct proscribed by the statutory scheme of the State of Illinois;* it does not attempt to reach conduct not otherwise prohibited. It does not permit the wielding of unlimited discretionary powers in its enforcement; its application does not depend upon the subjective views of officials to determine the propriety of the conduct. Insofar as its enforcement is dependent upon cross-reference to interrelated enactments, namely, any penal statutes of the State of Illinois, any alleged infirmity, with respect to such basis would be one, not of overbreadth, but of vagueness, which issue the court below has specifically decided adversely to appellees. Further, should any penal statute of the State of Illinois, upon which the statute in question is dependent for its vitality, be subsequently declared violative of any constitutional freedom, the effect would be only a further limitation upon the scope of the Intimidation Section without affecting the substance or constitutionality of this provision.

A comparison of the intimidation statute in question with Federal Statutes in the same area will readily demonstrate that the communication which constitutes the gist of the offense in the Illinois Intimidation statute is much more limited than the proscribed communications in the Federal statutes. The provision of Title 18 U. S. C. § 875 (d) is an extortion statute based upon:

> "Any communication containing any threat to injure the property or reputation of the addressee or of another or the reputation of a deceased person or any threat to accuse the addressee or any other person of a crime . . .".

This type of communication could amount to merely a civil wrong as opposed to the Illinois statute which requires the threat of a criminal offense. The utterances

proscribed by the Federal statute is broader in scope than the Illinois statute.

Again, in Title 18 U. S. C. § 1951, commonly known as the Hobbs Act, one can be guilty of a serious federal crime by threatening to do that which amounts to only a civil wrong. In the case of *U. S.* v. *Palmiotti*, 254 F. (2d) 491 (C. C. A. 2d 1958), the defendant, a union officer, was convicted under this section when he attempted to extort money from a contractor by threatening to pull the workmen off the job. This communication consisted of a threat to do that which was a mere civil wrong, to wit, breach of a labor contract. This type of communication, not being a threatened criminal offense, is outside the scope of the Illinois Intimidation statute. It would be anomalous to strike down a state statute that prohibits communication of threatened criminal conduct because the threatened criminal act is insubstantial, while, at the same time, to impose penalties for federal crimes the gist of which is the communication of threatened civil wrongs.

The guarantee of personal rights by the First Amendment contemplates intelligent and responsible behavior by each individual and provides no justification for *laissez-faire* conduct without any regard whatsoever for law and order within a community. One person's constitutional rights imply a concomitant duty in that person to respect the same rights in every other individual. Freedom is a concept of responsibility, which must be guided by intelligent self-restraint. To suggest that First Amendment rights can be exercised so extremely as to disturb law and order can only begin to erode our government of ordered liberty, which provides the only desirable climate to sustain these guarantees in all citizens. The suggestion of the Three Judge Court that certain minor unlawful conduct is insulated by the First Amendment pro-

mulgates a doctrine of permissive lawlessness, which has never been approved by this Court.

It is submitted that the Three Judge Court has completely overlooked the fundamental legal principle that the First Amendment does not protect illegal conduct. We believe that the question presented by this appeal is substantial and that it is of public importance.

Respectfully submitted,

JOHN J. STAMOS,
State's Attorney of Cook County, Illinois,

EDWARD J. HLADIS,
Chief of Civil Division,

RONALD BUTLER,
Assistant State's Attorney,
500 Chicago Civic Center,
Chicago, Illinois 60602,
Attorneys for Appellants.

APPENDIX A.

UNITED STATES DISTRICT COURT
Northern District of Illinois,
Eastern Division.

LAWRENCE LANDRY, ROMMELL MULLER, JOSEPH H. REYNOLDS, DAVID A. REYNOLDS, JAMES WASHINGTON, FRANK PITTO, ROBERT LUCAS, ROBERT BROWN, MICHAEL ROGERS, BERNARD HUGHES, ARNOLD FORD, VISSA MARIE TURNER, WYSINGO TURNER, ANDREW BROWN, CHARLES FLETCHER, JAMES JONES, HERMAN TOWNSEND, JEROME PARKER, RUDY HOOPER, and ACT, an unincorporated association,

Plaintiffs,

vs.

RICHARD J. DALEY, Mayor of the City of Chicago, Cook County, Illinois; JAMES CONLISK, Superintendent of Police of the City of Chicago, Illinois; JOHN S. BOYLE, Chief Judge of the Circuit Court of Cook County, Illinois; JOHN J. STAMOS, State's Attorney of Cook County, Illinois; RAYMOND F. SIMON, Corporation Counsel of the City of Chicago, Illinois; JOSEPH I. WOODS, Sheriff of Cook County, Illinois; RICHARD J. ELROD, Assistant Corporation Counsel, City of Chicago, Division of Ordinance Enforcement; MAURICE W. LEE, Magistrate, Circuit Court of Cook County, Illinois; JOHN S. LIMPERIS, Magistrate, Circuit Court of Cook County, Illinois; JOHN T. BURKE, JOSEPH RATKVICH and ROBERT KULOVITZ, Police Officers of the City of Chicago,

Defendants.

67 C 1863.

Before HASTINGS, *Circuit Judge*, HOFFMAN and WILL, *District Judges.*

OPINION.

WILL, *District Judge.* This is allegedly a class action, brought by the plaintiffs pursuant to Rule 23(a)(1)(3) of the Federal Rules of Civil Procedure on their own behalf and on behalf of all others similarly situated, seeking declaratory and injunctive relief. Some of the individual plaintiffs are negro citizens who currently face criminal prosecution before the Circuit Court of Cook County, Illinois. These prosecutions arose out of a series of demonstrations taking place in Chicago, Illinois, in 1967. Plaintiff, Act, is an unincorporated association, maintaining offices in Chicago, Illinois, among the purposes of which is to secure negro citizens their federal rights and end all forms of racial segregation and discrimination. To obtain these objectives, it engages in a variety of protest activities, including picketing, demonstrations, rallies, mass meetings, voter registration drives, community organization and publication. Plaintiffs, Lawrence Landry, Robert Lucas, Robert Brown and Michael Rogers are negroes and sue as representatives of the class of all negroes in the City of Chicago. Defendants are either officers of the City of Chicago, Illinois, or officers of Cook County, Illinois.

This Court has jurisdiction of this cause on the basis of both general federal question jurisdiction, 28 U. S. C. § 1331, and specific federal jurisdiction over cases seeking relief for certain specified federal wrongs, 28 U. S. C. § 1343.[1]

The complaint alleges that the defendants have purposefully entered into a plan or scheme of concerted and

1. *Landry, et al.* v. *Daley, et al.*, 67 C 1863, pp. 10-11, opinion dated December 28, 1967 (Will, J.).

joint action among themselves and with other persons unknown to the plaintiffs to deprive the plaintiffs of rights, privileges and immunities secured to them by the Constitution and laws of the United States. Pursuant to this plan, the defendants have allegedly prosecuted and threatened to prosecute the plaintiffs and other members of the class they represent under color and authority of certain statutes of the state of Illinois and certain ordinances of the City of Chicago. It is alleged that certain plaintiffs and other members of the class have been arrested without warrants of any kind or probable cause while peacefully demonstrating, that prosecutions based on these statutes and ordinances have been instituted against these plaintiffs and that they have been held on unreasonable and exhorbitant bail. The complaint asserts that these arrests and prosecutions, as well as threats of future enforcement of the statutes and ordinances, have been made by defendants without any expectation of securing valid convictions, but rather are part of a plan to employ arrest, detention on excessive bail and threats of prosecution to harass plaintiffs and their supporters and to discourage them from asserting and exercising their federal rights.

The complaint also alleges that the state statutes and city ordinances under which this plan or scheme has been effectuated are unconstitutional on their face.[2] It is contended that these statutes and ordinances are overbroad, vague and indefinite, permit a construction which would

2. The state statutes listed in the complaint are: Ill. Rev. Stat., Ch. 38, § 25-1 (Proscribing "Mob Violence"); Ill. Rev. Stat., Ch. 38, § 31-1 (Proscribing "Resisting or Obstructing a Peace Officer"); Ill. Rev. Stat., Ch. 38, § 21-2 (Proscribing "Aggravated Assault"); Ill. Rev. Stat., Ch. 38, § 12-4 (Proscribing "Aggravated Battery"); Ill. Rev. Stat., Ch. 38, § 12-6 (Proscribing "Intimidation").

The city ordinances listed in the complaint are: Municipal Code of Chicago, Ch. 11, § 33 (Proscribing "Obstructing or Resisting a Police Officer"); Municipal Code of Chicago, Ch. 193, § 1 (Proscribing "Disorderly Conduct").

violate plaintiffs' First Amendment guarantees and fail to meet the requisites of certainty and specificity which are required of criminal statutes under the principles of due process of law.

On the basis of these allegations, the plaintiffs seek: (1) the issuance of declaratory judgments declaring that the state statutes and city ordinances in question are void on their face as violative of the Constitution of the United States, and/or as applied to the conduct of the plaintiffs herein, (2) the issuance of a permanent injunction restraining the defendants, their agents, and attorneys from the enforcement, operation, or execution of any of these statutes and ordinances, and (3) the issuance of a permanent injunction restraining the defendants, their agents and attorneys from impeding, intimidating, hindering and preventing plaintiffs or members and supporters of Act from exercising the rights, privileges, and immunities guaranteed to them by the Constitution and laws of the United States.

Plaintiffs filed their complaint on October 27, 1967. Simultaneously, they moved that a three-judge court be convened to hear and determine the issues presented therein. Shortly thereafter, both the state and city defendants moved to dismiss, contending, *inter alia*, that the complaint failed to disclose a basis for equitable relief and that the doctrine of federal abstention should be utilized to allow the state courts an opportunity to adjudicate the issues presented in the complaint.

An opinion dealing with these motions was issued on December 28, 1967.[3] The defendants' motions to dismiss were denied. The complaint was found to raise several substantial constitutional issues within the competency of a three-judge court and to allege a formal basis for equi-

3. *Landry, et al.* v. *Daley, et al.*, 67 C 1863, opinoin dated December 28, 1967 (Will, J.).

table relief. The question of abstention was held to be premature. Plaintiffs' claims regarding the challenged city ordinances, however, were found to be inappropriate for determination by a three-judge court.[4] Accordingly, these claims were severed from the claims involving the state statutes and only the latter have been certified to this tribunal.

The issues involving the alleged unconstitutional application of the challenged state statutes have been held in abeyance pending determination of the constitutionality of the statutes themselves. Briefs addressed to the latter issue have been submitted by the parties, and a hearing on these issues was held on January 27, 1968.

Plaintiffs have abandoned their challenges to the constitutionality of the Illinois "Aggravated Assault"[5] and "Aggravated Battery"[6] statutes. The remaining statutes are: the Illinois "Mob Violence" statute,[7] the Illinois "Intimidation" statute,[8] and the Illinois statute proscribing "Resisting or Obstructing a Peace Officer."[9] Plaintiffs assert that these statutes are unconstitutional on their face for reasons of overbreadth, vagueness and indefiniteness.

The Question of Federal Forbearance.

The defendants have reasserted the arguments which they raised in their earlier motion to dismiss. They point out that certain of the plaintiffs currently face prosecution in the state courts for violations of the statutes challenged and that these plaintiffs have not asserted any constitutional attack upon any of these statutes in those criminal

4. *Id.* at 17-19.
5. Ill. Rev. Stat., Ch. 38, § 12-2.
6. Ill. Rev. Stat., Ch. 38, § 12-4.
7. Ill. Rev. Stat., Ch. 38, § 25-1.
8. Ill. Rev. Stat., Ch. 38, § 12-6.
9. Ill. Rev. Stat., Ch. 38, § 31-1.

proceedings, even though such an attack is readily available under Illinois law and procedure. They argue that the plaintiffs have adequate remedies available to them in the state courts and that the mere possibility of an erroneous application of constitutional standards by these courts does not amount to irreparable injury of such a nature as to justify equitable relief. It is also argued that federal declaratory and injunctive relief would be disruptive of the orderly administration of the state courts. Defendants contend, therefore, that this is a proper case for federal abstention.

The defendants' contentions rest on the premise that the principle of federalism requires that a federal district court forbear from direct interference with local law enforcement proceedings. Interference of the nature contemplated herein, it is argued, is destructive of state sovereignty and, hence, jeopardizes our federal system. An ultimate determination of these questions by the state courts, defendants admit, is subject to Supreme Court review. They distinguish such review from federal action at the present time, since the autonomy of local institutions would not be affected immediately and directly.

While state autonomy is a basic consideration, it is not the only one. Federalism is also designed to check local abuse of essential individual rights arising under the Constitution and laws of the United States.[10] The state courts have a duty to preserve these rights, and it has been generally assumed that they will fulfill this duty. The doctrine of abstention has often been invoked in order to avoid federal interference with state criminal prosecutions.[11] Similarly, limitations on federal equitable relief

10. *See* Note, 75 Yale L. J. 1007 (1966).

11. *See, e.g., Cleary* v. *Bolger*, 371 U. S. 392 (1962); *Pugach* v. *Dollinger*, 365 U. S. 458 (1960), *affirming* 277 F. 2d 739 (5th Cir.); *Douglas* v. *City of Jeannett*, 319 U. S. 157 (1942).

have been rigorously applied on numerous occasions to achieve the same result.[12] Deference to the interests and autonomy of the states, however, does not forbid all prior restraint of state criminal proceedings or independent inquiry by a federal tribunal into questions inherently linked with the enforcement of state laws.[13] The federal courts are vested with the primary responsibility of vindicating federal rights.[14] Where state statutes or state conduct allegedly impair rights guaranteed by the Constitution and particularly the First Amendment thereto, federal deference to state tribunals ultimately depends on whether these tribunals can adequately preserve the federal rights of the individual.[15] As is apparent from recent decisions of the United States Supreme Court and inferior federal courts, the fact that constitutional defenses may be raised in state court criminal proceedings does not in and of itself compel or even permit abstention.

In *Dombrowski* v. *Pfister*, 380 U. S. 479 (1965), for example, the Supreme Court clearly dispelled any notion that federalism requires automatic deference to state courts. *Dombrowski* involved a civil action seeking declaratory and injunctive relief from threatened prosecution under a state anti-subversive statute. The plaintiff

12. *See, e.g., Cleary* v. *Bolger, supra* note 12; *Douglas* v. *City of Jeannet, supra* note 12 at 161-65; *Beal* v. *Missouri Pacific R. R. Corp.*, 312 U. S. 45, 49-51 (1941); *Spielman* v. *Motor Sales Co.*, 295 U. S. 89, 95-97 (1935).

13. *See, Zwickler* v. *Koota*, 389 U. S. 241 (1967); *Dombrowski* v. *Pfister*, 380 U. S. 479 (1965); *Carmichael* v. *Allen*, 267 F. Supp. 985 (N. D. Ga. 1967).

14. *Zwickler* v. *Koota*, 389 U. S. 241, 251 (1967).

15. *See, Zwickler* v. *Koota, supra* note 14 at 249-52; *Dombrowski* v. *Pfister, supra* note 14; *Cf. Cameron* v. *Johnson*, 381 U. S. 741, 748-49, 755-56 (1965) (disenting opinions). *See, also*, Brewer, *Dombrowski* v. *Pfister: Federal Injunctions Against State Prosecutions in Civil Cases—A New Trend in Federal-State Judicial Relations*, 34 Fordham L. Rev. 71, 90-91 (1965); Note, 75 Yale L. Rev. 1007, 1033-34 (1966).

alleged, first, that the prosecution was instituted in bad faith solely to discourage civil rights activities and, second, that the statute was an unconstitutionally vague regulation of freedom of expression. The district court dismissed, applying traditional equitable limitations on a federal court's power to enjoin state criminal proceedings and also the doctrine of abstention.[16]

On appeal, the Supreme Court reversed, indicating that either ground, if proven, justified federal equitable relief. The Court stated,

> [t]he allegations in this complaint depict a situation in which defense of the State's criminal prosecution will not assure adequate vindication of constitution rights. They suggest that a substantial loss or impairment of freedoms of expression will occur if appellants must await the state court's disposition and ultimate review in this Court of any adverse determination. These allegations, if true, clearly show irreparable injury. 380 U. S. at 485-86.

The Court also held that federal abstention was improper "where . . . statutes are justifiably attacked on their face as abridging free expression or as applied for the purpose of discouraging protected activities." *Id.* at 489-90. The controlling consideration on the abstention issue, as on the question of equitable relief, was the inability of the state court proceedings to assure expeditious vindication of federal rights. *Id.* at 490-92. *Cf. Cameron* v. *Johnson*, 381 U. S. 741, 755 (1965) (dissenting opinion).

In *Zwickler* v. *Koota*, 389 U. S. 241 (1967), the Supreme Court again indicated that the federal courts may not defer to the state courts where deference is likely to result in a substantial impairment of federal rights. The appellant in *Zwickler* had sought injunctive and declaratory

16. *Dombrowski* v. *Pfister*, 227 F. Supp. 556, 562-63 (E. D. La. 1964).

relief in a federal district court from threatened enforcement of a state statute making it unlawful to distribute anonymous political handbills. Appellant contended that this statute was an over-broad regulation of expression. A three-judge district court applied the abstention doctrine, reasoning that abstention was justified where there were no "special circumstances" entitling plaintiff to an injunction against criminal prosecution.[17]

The Supreme Court reversed the district court and remanded the cause, concluding that irrespective of the propriety of federal injunctive relief, it was inappropriate to abstain from declaratory relief.[18] In its opinion, the Court pointed out that the claimed constitutional infirmity was overbreadth and that no state court construction could obviate this vice. Federal forbearance, it reasoned, would result in delay during which the valid exercise of First Amendment rights might be inhibited.[19] Under such circumstances, it concluded that the federal courts have a duty to provide a federal forum for at least declaratory clarification of the federal claim.[20]

The principles announced by the Supreme Court in *Dombrowski* and *Zwickler* appear clearly applicable in the instant case. Plaintiffs claim that statutes invalid because of vagueness, indefiniteness and overbreadth have been used by defendants in furtherance of a scheme to discourage plaintiffs' legitimate exercise of First Amendment rights. In *Dombrowski*, the Court indicated that defense in a state criminal prosecution is not sufficient to correct either of these evils. Arrest, detention, and threats of prosecution may have an *in terrorem* effect on

17. *Zwickler* v. *Koota*, 261 F. Supp., 985, 993 (E. D. N. Y. 1966).

18. 389 U. S. 241, 254-55 (1967).

19. *Id.* at 249-52.

20. *Id.* at 245-48, 251-52.

free expression. Where prosecutions are instituted in bad faith in furtherance of a scheme to discourage protected activities, the ultimate success of the defendant does not alter the impropriety of the unconstitutional scheme.[21] The adjudication simply resolves the guilt or innocence of the defendant; it does not purge the scheme of its impact upon federally protected rights.[22]

Similarly, the possible application of a vague, uncertain, or overbroad statute regulating freedom of expression may have an inhibiting effect on the valid exercise of freedom of expression. Where prosecution is instituted under such a statute and its provisions are not susceptible to clarification in a single prosecution, defense in a state criminal proceeding is likely to lead to piecemeal construction resolving only the uncertainty of the defendant with no likelihood of obviating similar uncertainty for others.[23] Those affected or potentialy affected by such a statute, however, are entitled to be free from the burden of resolving its uncertainty through state prosecutions.[24]

Defendants contend that the conduct of the plaintiffs who are facing state prosecution is "hard core conduct" which would obviously be prohibited under a narrow and clearly constitutional construction of the statutes. Hence, they argue, federal equitable relief is completely unwarranted. But even assuming arguendo that equitable relief is unwar-

21. 380 U. S. at 490.

22. Although *Dombrowski* dealt only with the bad faith enforcemetn of statutes regulating speech, commentators have suggested that its holding is not limited to the First Amendment area. *See*, Brewer, *Dombrowski* v. *Pfister: Federal Injunctions Against State Prosecutions in Civil Rights Cases—A New Trend in Federal-State Judicial Relations*, 34 Fordham L. Rev. 71 (1965); *Note*, 75 Yale L. Rev.1007, 1033-34 (1966). *Cf.* Bailey, *Enjoining State Criminal Prosecutions Which Abridge First Amendment Freedoms*, 3 Harv. Civ. Rights Lib. L. Rev. 67 (1967).

23. *See* 380 U. S. at 490-92. *See, also, Cameron* v. *Johnson*, 381 U. S. 741, 755 (1967) (dissenting opinion).

24. 389 U. S. at 491.

ranted, this does not, as *Zwickler* holds, obviate plaintiffs' right to declaratory relief. Moreover, the class also includes plaintiffs who do not now face prosecution. The statutes in dispute are challenged on grounds of overbreadth, as well as vagueness.[25] *Zwickler* indicates that under such circumstances a federal court has a duty to adjudicate the federal claims which are before it and to render declaratory relief one way or the other.[26]

THE APPLICABLE CONSTITUTIONAL PRINCIPLES.

As noted earlier, this suit arises out of the application and threatened future application of certain Illinois statutes and ordinances of the City of Chicago to plaintiffs' civil rights activities. The claims regarding the application of

25. It should be noted that *Dombrowski* specifically held that federal abstention is inappropriate where a statute regulating expression is challenged on grounds of vagueness. 380 U. S. at 489-90. Normally, the state must assume the burden of obtaining a permissible narrow construction by way of a declaratory judgment proceeding, if it wishes to avoid a federal proceeding. *Id.* at 491. There is an exception to this prescription. Where a readily apparent construction suggests itself as a vehicle for rehabilitating the statutes in a single prosecution, federal forbearance is proper. *Id.* at 491. It is apparent, however, that this exception applies only if the entire statute is amenable to correction in one prosecution where all the vagueness and overbreadth will be eliminated. Bailey, *Enjoining State Criminal Prosecutions Which Abridge First Amendment Freedoms*, 3 Harv. Civ. Rights-Civ. Lib. L. Rev. 67, 90 (1967).

The plaintiffs in the present suit challenge three different state statutes on both grounds of vagueness and overbreadth. One of these statues, the Intimidation statute, is not involved in any of the prosecutions currently pending in the state courts. It is obvious, therefore, that the present suit does not come within the exception recognized in *Dombrowski*.

26. *See* 389 U. S. at 249-50, 253-54. It should also be noted that the normal rules of standing are relaxed in the area of First Amendment freedoms. Defendants under criminal prosecution are permitted to challenge overbroad statutes on their face, without demonstrating that their own conduct could not constitutionally have been proscribed by a different and more precise enactment. *See Thornhill* v. *Alabama*, 310 U. S. 88, 97-98 (1940).

the city ordinances do not pose a proper question for a three-judge court and have been severed from the instant proceeding for consideration by a single judge. The plaintiffs' claims in regard to the remaining state statutes are, first, that these statutes have been applied in bad faith, solely for the purpose of discouraging their civil rights activities, and, second, that the Illinois "Mob Action" statute, "Resisting Arrest" statute, and "Intimidation" statute are unconstitutionally uncertain both for reasons of vagueness and overbreadth. The adjudication of the first grounds has been held in abeyance and the scope of the present inquiry, accordingly, has been limited to the constitutionality of the provisions of the three statutes which plaintiffs assail. Before undertaking any discussion of these specific statutes, however, a brief canvass of the applicable constitutional principles would seem appropriate.

In its most basic sense, the present suit involves the boundaries of state regulation of demonstrations, picketing, mass protest meetings, marches, and similar assemblies. Although demonstrations are distinguishable from other forms of self expression, it is generally recognized that they are within the protection of the First Amendment. There are two basic reasons for this. The first is that the fundamental considerations underlying the rights of free speech and peaceful assembly are also relevant to peaceful demonstration. Peaceful demonstration, like the rights of free speech and peaceful assembly, advances society's interests in a variety of ways. Through peaceful demonstration, individual members of society may express their views and thereby participate in the political apparatus of a democracy. Demonstration, like most conventional means of expression, also assures the disclosure and discussion of the real issues faced by society, thereby making possible rational judgment by the electorate. It provides an outlet for dissenting people, and history reveals that dissentient

groups are more likely to adhere to the majority will, if their views have also been aired. Similarly, it provides minorities an opportunity to force re-examination of social institutions, to enlist the sympathy of other citizens, to mobilize supoprters and ultimately to strengthen their bargainign position.[27] Ultimately, therefore, peaceful demonstration plays a role in the maintenance of a balance between stability and change in society, very much like other First Amendment rights.

The second reason is that peaceful demonstration is a practical means of political protest.[28] More conventional means of self-expression often are of little real utility to political minorities. The instruments of mass media may be beyond their financial resources and political leaders may turn a deaf ear to persons who are unpopular with, or uknown to, the general public. A demonstration, therefore, may be the only effective means by which a minority can publicize a message or reach a desired audience.[29]

Demonstrations will sometimes, however, conflict with various other legitimate state interests. In such instances, their social value must be subordinated to other values and considerations. Perhaps the most important counter-vailing consideration is the state's interest in preventing physical violence or abuse of property. Thus, demonstrations lose their constitutional protection if the participants engage in violence.[30] And, under certain circumstances, conduct short of violence may also subject demonstrators to arrest or dispersal. For instance, provocative conduct or language which undertakes incitement to riot may also

27. *See* Note, 80 Harv. L. Rev. 1773 (1967).

28. *See Adderley* v. *Florida*, 385 U. S. 39, 50-51 (1966) (dissenting opinion).

29. Note, 80 Harv. L. Rev. 1773 (1967).

30. *See, e.g., Feiner* v. *New York*, 340 U. S. 315 (1951); *Pritchard* v. *Davis*, 326 F. 2d 323 (1964); Note, 80 Harv. L. Rev. 1773, 1774-75 (1967).

lead to loss of constitutional protection.[31] Other state interests which have been held to justify similar regulation of demonstrations include the maintenance of the free flow of traffic[32] and the prevention of substantial interference with government operations or the regular use of public property.[33]

Although the Supreme Court has indicated that demonstrations are subject to greater state regulation than "pure speech,"[34] it seems clear that the state may only impose "reasonable" restrictions on time, place, duration, or manner.[35] The reasonablness of a regulatory measure must necessarily be viewed in terms of the competing interersts of the demonstrators and the state. In cases where the

31. *See Feiner* v. *New York*, 340 U. S. 315, 321 (1951); *Chaplinsky* v. *New Hampshire*, 315 U. S. 568, 573 (1942). Although the Supreme Court accorded protection to "boisterous," "loud," and "flamboyant" conduct in *Edwards* v. *South Carolina*, 372 U. S. 229, 233 (1963), even noisy conduct may justify restrictions on demonstrations under some circumstances. *See Kovacs* v. *Cooper*, 336 U. S. 77 (1949).

32. *E.g., Farmer* v. *Moses*, 232 F. Supp. 154 (S. D. N. Y. 1964); *Clemons* v. *Congress of Racial Equality*, 201 F. Supp. 737 (E. D. La. 1962). *See, also, Cox* v. *Louisiana*, 379 U. S. 536, 554-55 (1965).

33. *See Adderley* v. *Florida*, 385 U. S. 39 (1966); *United States* v. *Aarons*, 310 F. 2d 341 (2d Cir. 1962); *Frend* v. *United States*, 100 F. 2d 691 (D. C. Cir.) *cert. denied*, 306 U. S. 640 (1938). See, also, *Brown* v. *Louisiana*, 383 U. S. 131, 157 (1966) (dissenting opinion); *Cox* v. *Louisiana*, 379 U. S. 536, 561-64 (1965). Other state interest which might justify restrictions on demonstrations in some circumstances would seem to include the interests of protecting individual privacy and private property. *See* Kamin, *Residential Picketing and the First Amendment*, 61 N. W. L. Rev. 177 (1966); Note, 80 Harv. L. Rev. 1773, 1777-80 (1967).

34. *See Cox* v. *Louisiana*, 379 U. S. 536, 555 (1965). For instance, a distinction between "pure speech" and "speech plus" might be drawn. *See* Kalvin, *The Concept of the Public Forum: Cox* v. *Louisiana*, 1965 Sup. Ct. Rev. 1, 22-25 (1965). This distinction, however, would seem to merely point out that certain state interests may conflict with the right to demonstrate and other forms of "speech plus" to a greater extent than with "pure speech."

35. *See Cox* v. *Louisiana*, 379 U. S. 536, 558 (1965).

reasonableness of the application of a regulatory measure is challenged, this question ultimately depends upon the balance of a number of factors: the gravity of the evil which the state seeks to prohibit, the probability of the evil, the conduct and intent of the demonstrators, the circumstances of the demonstration, and the alternatives open to the government which infringe upon the demonstrator's interests to a lesser extent.[36] In cases where the reasonableness of the regulatory measure itself is challenged, as in the present case, the constitutionality of the regulation turns upon its certainty and its breadth.[37]

The cases in this latter category actually involve two distinct concepts: (1) vagueness or indefiniteness, and (2) overbreadth.[38] These questions frequently overlap in any given case and are often loosely referred to in the aggregate as the "vagueness doctrine." Their application, however, is based on different constitutional principles.

The concept of vagueness or indefiniteness rests on the constitutional principle that procedural due process requires fair notice and proper standards for adjudication. The primary issues involved are whether the provisions of a penal statute are sufficiently definite to give reasonable notice of the prohibited conduct to those who wish to avoid

36. *See Yates* v. *United States*, 354 U. S. 298, 318-27 (1957); *Dennis* v. *United States*, 341 U. S. 494, 508-11 (1951). *See, also*, Mendelson, *Clear and Present Danger Test—From Schenck to Dennis*, 52 Colum. L. Rev. 313 (1952); Richardson, *Freedom of Expression and the Function of Courts*, 65 Harv. L. Rev. 1 (1951); Note, 71 Harv. L. Rev. 85, 123-25 (1957).

37. *See, Ashton* v. *Kentucky*, 384 U. S. 195, 200-201 (1966); *Shuttlesworth* v. *City of Birmingham*, 382 U. S. 87, 93-95 (1965); *Baggett* v. *Bullitt*, 377 U. S. 360, 373-84 (1964); *Edwards* v. *South Carolina*, 372 U. S. 229, 237-38 (1963); *N. A. A. C. P.* v. *Button*, 371 U. S. 916, 432-38 (1963).

38. *See, generally*, Collings, *Unconstitutional Uncertainty—An Appraisal*, 40 Cornell L. Rev. 195 (1965). *Cf.* Amsterdam, The Void-For-Vagueness Doctrine In The Supreme Court, 109 U. Penn. L. Rev. 67 (1960).

its penalties and to apprise judge and jury of standards for the determination of guilt.[39] If the statute is so obscure that men of common intelligence must necessarily guess at its meaning and differ as to its applicability, it is unconstitutional.[40]

The concept of overbreadth, on the other hand, rests on principles of substantive due process which forbid the prohibition of certain individual freedoms. The primary issue is not reasonable notice or adequate standards, although these issues may be involved. Rather the issue is whether the language of the statute, given its normal meaning, is so broad that its sanctions may apply to conduct protected by the Constitution.[41] Frequently, the resolution of this issue depends upon whether the statute permits police and other officials to wield unlimited discretionary powers in its enforcement.[42] If the scope of the power permitted these officials is so broad that the exercise of constitutionally protected conduct depends on their own subjective views as to the propriety of the conduct, the statute is unconstitutional.[43]

These concepts have particular relevance to statutes touching upon the areas of free speech and assembly. Although the state may regulate speech and assembly where the exercise of these rights conflicts with certain state

39. *See* Collings, *supra* note 38 at 196-97.

40. *E.g.*, *Baggett* v. *Bullitt*, 377 U. S. 360, 367-73 (1964); *Cramp* v. *Board of Public Instruction*, 368 U. S. 278, 287 (1961); *Lanzetta* v. *New Jersey*, 306 U. S. 451, 453 (1939).

41. *See* Collings, *supra* note 38 at 196-97.

42. *See, e.g.*, *Ashton* v. *Kentucky*, 384 U. S. 195, 200-201 (1966); *Shuttlesworth* v. *City of Birmingham*, 382 U. S. 87, 90-92 (1965); *Edwards* v. *South Carolina*, 372 U. S. 229, 237-38 (1963).

43. *See, e.g.*, *Shuttlesworth* v. *Birmingham*, 382 U. S. 87, 90 (1965); *N. A. A. C. P.* v. *Button*, 371 U. S. 415, 433, 435-36 (1963). *See, also*, Amsterdam, *The Void-For-Vagueness Doctrine in the Supreme Court*, 109 U. of Pa. L. Rev. 67, 75-76, 80-81, 96-104 (1960). *Cf. Baggett* v. *Bullitt*, 377 U. S. 360, 371 (1964); *Smith* v. *California*, 361 U. S. 147, 151 (1961).

interests, it may regulate only to the extent necessary to discharge these interests.[44] A vague or overbroad statute, however, is likely to have a deterrent effect which is beyond that necessary to fulfill the state's interests. Rather than chance prosecution, people will tend to refrain from speech and assembly which might come within the statute's ambit.[45]

Such a deterrent effect on the exercise of these rights is impermissible under the First Amendment.[46] The Amendment was designed not only to protect these rights, but also to encourage their use. Consequently, the requirements of clarity, definiteness, and narrow scope are most strictly observed when a statute places a possible limitation upon First Amendment rights.[47] Such scrutiny is necessary to provide a buffer between the valid exercise of the police power by the state and excessive restriction of the free dissemination of ideas.[48]

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44. *See De Jonge* v. *Oregon*, 299 U. S. 363, 365-66 (1937); *Stromberg* v. *California*, 283 U. S. 359 (1931); *Cf. Yates* v. *United States*, 354 U. S. 298 (1957).

45. *Dombrowski* v. *Pfister*, 380 U. S. 479, 486-89 (1965); *N. A. A. C. P.* v. *Button*, 371 U. S. 415, 432-33 (1963); *Winters* v. *New York*, 333 U. S. 507, 519-20 (1948); *Thornhill* v. *Alabama*, 310 U. S. 88, 97-98 (1940); *Herndon* v. *Lowry*, 301 U. S. 242, 261-62 (1937).

46. *See, e.g., Dombrowski* v. *Pfister*, *supra* at 494-96; *Freedman* v. *Maryland*, 380 U. S. 51, 59-60 (1965); *N. A. A. C. P.* v. *Button*, *supra* at 437; *Thornhill* v. *Alabama*, *supra* at 101-106.

47. *E.g., Keyishian* v. *Board of Regents*, 385 U. S. 589, 603-04 (1967); *Cox* v. *Louisiana*, 379 U. S. 536, 551-52 (1965); *Edwards* v. *South Carolina*, 372 U. S. 229, 237-38 (1963); *Cramp* v. *Board of Public Instruction*, 368 U. S. 278, 287-88 (1961).

48. This rationale has been described most succinctly by Mr. Justice Brennan for the Court in *N. A. A. C. P.* v. *Button*, 371 U. S. at 433: "These freedoms are delicate and vulnerable, as well as supremely precious in our society. The threat of sanctions may deter their exercise almost as potently as the actual application of sanctions . . . Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity." *See, also,* Amsterdam, *supra* note 43 *supra*.

A number of factors are taken into consideration in determining whether a state regulation meets these standards of clarity and narrowness. Among them are: (1) whether a substantial interest worthy of protection is identified or apparent from the language of the statute;[49] (2) whether the terms of the regulation are susceptible to objective measurement by men of common intelligence;[50] (3) whether those charged with its enforcement are vested only with limited discretion;[51] (4) if penal, whether some element of knowledge or intent to obstruct a state interest is required;[52] and (5) whether its clarity is dependent upon manifold cross-reference to interrelated enactments or regulations.[53]

49. *See* Note, 80 Harv. L. Rev. 1773, 1788 (1967).

50. *See Keyishian* v. *Board of Regents*, 385 U. S. 589, 601 (1967). *See, also*, authorities cited in note 40 *supra* and accompanying text.

51. *Compare Cox* v. *New Hampshire*, 312 U. S. 569, 575-76 (1941); *with, Shuttlesworth* v. *Birmingham*, 382 U. S. 87, 90-92 (1965); *Edwards* v. *South Carolina*, 372 U. S. 229 (1963).

52. *See Adderley* v. *Florida*, 385 U. S. 39, 42-43 (1967). *See, also, Cox* v. *Louisiana*, 379 U. S. 559 (1965), wherein a Louisiana statute regulating picketing in or near a court house "with intent to interfere" with the administration of justice was upheld as valid on its face. On other occasions, the Supreme Court when holding a statute unconstitutional has emphasized the fact that the law reached innocuous acts. *Keyishian* v. *Board of Regents*, 385 U. S. 589, 599-601 (1967); *Baggett* v. *Bullitt*, 377 U. S. 360, 368-72 (1964). Moreover, the Supreme Court has held on a number of occasions that a conviction based upon membership in a group which pursues illegal ends requires a specific intent to further such ends. *See Elfbrant* v. *Russell*, 384 U. S. 11, 19 (1966); *Cramp* v. *Board of Public Instruction*, 368 U. S. 278, 285-87 (1964); *Noto* v. *United States*, 267 U. S. 290, 299-300 (1961). *Cf.* Collings, *supra* note 38 at 227-231.

53. *See Keyishian* v. *Board of Regents*, 385 U. S. 589, 604 (1967).

THE MOB ACTION STATUTE.

Plaintiffs contend that the Illinois Mob Action statute, Ill. Rev. Stat. Ch. 38, § 25-1, is void for both reasons of vagueness and overbreadth. It provides:

(a) Mob action consists of any of the following:

(1) the use of force or violence disturbing the public peace by two or more persons acting together and without authority of law; or

(2) The assembly of two or more persons to do an unlawful act; or

(3) The assembly of two or more persons, without authority of law, for the purpose of doing violence to the person or property of any one supposed to have been guilty of a violation of the law, or for the purpose of exercising correctional powers or regulative powers over any person by violence.

(b) Any person engaged in mob action shall be fined not to exceed $500 or imprisoned in a penal institution other than the penitentiary not to exceed thirty days, or both.

(c) Any participant in a mob action which shall by violence inflict injury to the person or property of another shall be fined not to exceed $1,000 or imprisoned in a penal institution other than the penitentiary not to exceed one year, or in the penitentiary from one to five years, or both fined and imprisoned.

(d) Any participant in a mob action who does not withdraw on being commended to do so by any peace officer shall be fined not to exceed $500 or imprisoned in a penal institution other than the penitentiary not to exceed one year, or both.

This statute is a section of the Illinois Criminal Code of 1961. It represents a compilation of the prior criminal offenses of rout, riot, affray, unlawful assembly and mob

action.[54] The statute has not been construed by the Illinois courts. Under these circumstances, we must place our own construction on the statute, giving the words their reasonable and natural meaning.

The statute proscribes three separate categories of conduct as "Mob Action." Since these provisions are not interdependent and the validity of the statute as a whole would not rest on any one of them,[55] we shall examine each separately.

Subparagraph (1)(a) proscribes:

> The use of force or violence disturbing the public peace by two or more persons acting together and without authority of law.

It is obvious that this provision was designed for the protection of persons and property and for the maintenance of public order. It cannot be questioned that the state of Illinois has an interest in preventing physical violence to persons or abuse to private or public property. Indeed, the constitutional guarantee of liberty presupposes the existence of an orderly society, wherein grievances and disputes are settled by peaceful means rather than force and violence. This is a sufficiently strong state interest to justify regulation of certain demonstrations.

Although this provision resembles breach-of-peace statutes, it is not so vague or indefinite as to be invalid. The use of "force or violence" is specifically required. The words "force" and "violence" are not so obscure as to fail to advise the public of the prohibited conduct. In common parlance, force means "power, violence, compulsion, or constraint exerted upon or against a person or thing."[56]

54. Ill. Rev. Stat. Ann. ch. 38, § 25-1 (Smith-Hurd 1964) (Committee Comments).

55. *See* Ill. Rev. Stat. Ann. ch. 38, § 34-2 (Smith-Hurd 1964).

56. Webster, New International Dictionary p. 3a (3d ed. 1963 Unabridged). It is also defined as "violence or such threat or display of physical aggression toward a person as reasonably inspires fear of pain, bodily harm, or death. *Id.* at p. 3c.

The word "violence" imparts a similar meaning. It means "the exertion of any physical force so as to injure or abuse."[57] "Force," "violence," "compulsion," "constraint," and "restraint" convey a similar idea of the exertion of power against the will, wish or consent of another.[58] Given a reasonable and natural construction, these terms connote either physical attack upon person or property, or physical aggression reasonably capable of inspiring fear of injury or harm to a person or property. We believe it is apparent, then, that a reasonable interpretation of this provision precludes its applicability to the peaceful exercise of the rights of free speech and assembly.

The statute further requires that two or more persons be "acting together" and "without authority of law." We see no ambiguity in the phrase "acting together." In the context of this provision, it conveys combined, conjoint or concerted action. The phrase "without authority of law" is apparently designed to limit the scope of the enactment by excepting those situations in which the law recognizes a justifiable use of force, such as by police officers, to the extent reasonably necessary to effect an arrest; by persons acting in self-defense, etc.[59] While for reasons explained later herein, the phrase lacks some clarity, this would not seem fatal to this provision.

Similarly, subparagraph (a) (1) does not seem susceptible to an overbroad application. The use of force or violence is specifically required before it is applicable.[60] It

57. Webster, New International Dictionary p. 1a (3d. ed. 1963 Unabridged).

58. *People* v. *McIlvain*, 55 Cal. App. 2d 322, 130 P2d 131, 134 (2d Dist. 1942).

59. See Ill. Rev. Stat. Ann. Ch. 38, § 7-1, et seq. (Smith-Hurd 1964).

60. Although the standard breach-of-peace statute may be so broad and all-embracing that its constitutionality becomes doubtful, the crucial defect stressed by the Supreme Court in both *Cox* v.

proscribes only non-peaceful demonstrations and is not suggestive of a vehicle for the suppression of ideas. Moreover, the use of force or violence carries with it *sub silentio* a destructive or threatening intent. Furthermore, the scope of the provision is narrowed by the requirements that the persons to which it is applicable be "acting together" and "without authority of law." Even without the latter phrase, this provision reaches only a narrow scope of conduct which is not protected by the First Amendment.

Subparagraph (a) (2) proscribes:

> The assembly of two or more persons to do an unlawful act; or

The revisor's note to the Illinois Criminal Code of 1961 indicates that this provision incorporates the common-law offense of "unlawful assembly."[61] We do not doubt that the state of Illinois has a valid interest in preventing a project which will breach its criminal laws. However, the language of subparagraph (a) (2) is not so limited. This provision proscribes an assembly to do an "unlawful act." The phrase "unlawful act" in its normal meaning is not limited to criminal illegality; it includes city regulatory ordinances, quasi-criminal ordinances, torts, or other civil wrongs.[62] This implies protection of other state interests

Louisiana, 379 U. S. 536 (1965), and *Edwards* v. *South Carolina*, 372 U. S. 229, 237 (1963), was the use of such a statute against peaceful conduct. In *Cox*, however, the Court seemed to suggest that breach-of-peace statutes may still be used to convict demonstrators who are either violent or past the bounds of argument. 279 U. S. at 551-52. Note, 80 Harv. L. Rev. 1773, 1783 (1967). Clearly, therefore, where the statute itself requires violence, it would appear to be constitutional.

61. Ill. Rev. Stat. Ann. Ch. 38, § 25-1 (Smith-Hurd 1964) (Committee Comments).

62. For instance, the phrase "unlawful act" may be contrasted with the term "offense." This latter term is specifically defined as and limited to the "violation of any penal statute of the state." Ill. Rev. Stat. Ch. 38, § 2-12 (1967).

which are not readily apparent, and which may not justify suppression of speech or assembly.

This provision certainly goes beyond narrowly drawn statutes "concerning the time, place, duration, or manner of use of the streets for public assemblies."[63] Moreover, the phrase "unlawful act" fails to apprise the public of the prohibited conduct. Men of ordinary intelligence have no way of ascertaining what breach of criminal or civil law may subject them to arrest and prosecution.

Under a literal application of the section, a wide variety of conduct which would at most constitute a misdemeanor or which might involve no criminal act at all but which would be "unlawful" merely in a civil sense becomes felonious if two or more persons gather together to perform it. Moreover, the language apparently would make the act of assembling to contemplate or consider "unlawful" conduct a crime even though the project was ultimately abandoned and the "unlawful" acts never performed.

Perhaps this provision's greatest vice is that it is a ready vehicle for the suppression of ideas. Failing as it does to define what constitutes an "unlawful act," it leaves too much to the calculation of its enforcer. If the ideas portrayed by demonstrators do not coincide with the subjective views of police, any technical violation of either civil or criminal law may be invoked to suppress a demonstration.[64] The "potential for arbitrarily suppressing First Amendment liberties" is all too clear. *Shuttlesworth* v. *Birmingham*, 382 U. S. 87, 90-91 (1965). In light of the protection afforded peaceful assembly by the First Amend-

63. *See Cox* v. *Louisiana*, 379 U. S. 536, 558 (1965).

64. In this sense, it is similar to the statutes which were overturned in *Cox* v. *Louisiana*, 379 U. S. 536, 555-57 (1965) and *Edwards* v. *South Carolina*, 372 U. S. 229, 233-37 (1963).

ment, we conclude that this provision is impermissively vague and overbroad.

Subparagraph (a) (3) proscribes:

> The assembly of 2 or more persons, without authority of law, for the purpose of doing violence to the person or property of any one supposed to have been guilty of a violation of the law, or for the purpose of exercising correctional powers or regulative powers over any person by violence.

The gist of this offense is "the exercise by violence of purported correctional power."[65] It is readily apparent that this provison is designed to protect persons and their property who are accused of crime or otherwise subject to public wrath.[66] Thus, it involves not only the interest of protecting persons and property, but also the interest of preventing the usurpation of the police powers by unauthorized groups. These interests are sufficiently strong to justify regulation of such demonstrations.

This provision contains no patent ambiguities. The word "assembly" has a definite connotation in every day conversation as meaning "a company of persons collected together in one place for some common purpose."[67] The phrase "without lawful authority" obtains meaning from the purpose and context of the provision. It excludes police

65. Ill. Rev. Stat. Ann. Ch. 38, §25-1 (Smith-Hurd 1964) (Committee Comments).

66. The predecessor of this provision was the subject of an opinion in *Slaton* v. *City of Chicago*, 8 Ill. App. 2d 47, 130 N. E. 2d 205 (1st Dist. 1955). As interpreted therein one of the purposes of this provision is "to discourage and prevent interference with the orderly processes of administering the law or powers delegated to the lawful authorities, and the usurpation of those powers, wholly or in part, by unauthorized groups of persons for what they wrongfully assume to be a collective interest." *Id.* at 57, 130 N. E. 2d at 210. *See, also, Anderson* v. *City of Chicago*, 313 Ill. App. 616, 40 N. E. 2d 601 (1st Dist. 1942).

67. Webster, New International Dictionary n. 1a (3d ed. 1964, Unabridged).

and other officials who can legally exercise the police power. Similarly, the word "violence" as noted above, conveys a commonly understood meaning and as used herein connotes either physical attack upon persons or property, or physical aggression reasonably capable of inspiring fear of injury or harm.

Amici curiae urge that this provision is invalid for vagueness because it includes an assembly "for the purpose of exercising correctional powers or regulative powers over any person." Rather than broadening the scope of the provision, however, this language limits it. When the last two words "by violence" are included, it clearly proscribes only an assembly for the purposes of administering punishment to or exercising coercion upon a person by physical force. Given a reasonable and natural construction, therefore, this provision does not fail to provide fair notice or adequate standards.

Likewise, the section poses no problems of scope. It is directed only at conduct which endangers persons or property and which usurps the role of the state. It requires specific intent, i.e., an intent to do violence to a person or his property or an intent to exercise corrective powers or regulatory powers over a person by violence. The use of the word "assembly" requires that this intent be shared by members of the group. These standards clarify and narrowly limit the scope of the section. Normally construed and properly applied, this provision is neither vague nor overbroad.

The "Mob Action" statute also promulgates three penalties for the conduct proscribed therein. *Amici curiae* suggest that the language used in each of these provisions is ambiguous when read in reference to the proscribed conduct. For purposes of clarity, the effect of each of these provisions will be considered separately.

Sub-section (b) provides penalties in regard to "any person engaged in mob action." The basic question is how the phrase "engaged in" is to be read in reference to subparagraphs (a) (1) and (a) (3). The word "engage" has a common, well-understood import. It means "to occupy, to employ, or to involve."[68] When the phrase "any person engaged in" is read in conjunction with subparagraph (a) (1) a clear and narrow meaning emerges; any person occupied in or employed in the use of force or violence is subject to penalty. This meaning poses no problems of breadth or clarity.

When the phrase "engaged in" is read in conjunction with subparagraph (a) (3) a similarly clear and narrowing meaning is apparent. Any person who is employed or occupied in a group with a common purpose to use violence against a person or property or to punish or coerce a person by violence is subject to penalty. This language is clear and poses no problems of substantive due process.

Subsection (c) provides penalties for "any participant in a mob action which shall by violence inflict injury to the person or property of another." "Participant" is commonly defined as "one that takes part or shares in something with others."[69] Given a reasonable and natural construction, this phrase, when read in conjunction with subparagraph (a) (1), means one who takes part in or shares in the use of force or violence. Similarly, this phrase, when read in conjunction with subparagraph (a) (3), means one who takes part in or shares in a group with a common purpose to use violence against a person or property or to punish or coerce a person by the use of violence. These constructions would seem readily apparent to men of ordinary intelligence.

68. Webster, New International Dictionary n. 1 (3d ed. Unabridged).

69. Webster, New Internaional Dictionary n. 1 (3d ed. Unabridged).

Nevertheless, the scope and clarity of this provision has been challenged. Implicit in the statute, it is argued, is a distinction between being actually "engaged in" a mob action and being a "participant" in a mob action. The former phrase implies the applicability of the statute to those who actually are involved in a scheme prohibited by subparagraph (a) (3). The latter phrase, it is contended, implies the applicability of the statute to those who are involved to a lesser extent. It is urged that the statute might properly be construed to be applicable to persons who participate in an initially peaceful demonstration, when unbeknown to them or contrary to their desires and intention, other members of the group commit violence inflicting injury during the course of the demonstration. In other words, it is argued that the statute might be applicable to a peaceful member of an assembly who supports the lawful but not unlawful purpose of the assembly. Indeed, it is contended that the word "participant" is so ambiguous that the statute might be applicable to a bystander in close proximity to the violent "mob action."

We need not speculate about the possible implications of the word "participant." As noted earlier, the Mob Action statute is a provision of the Illinois Criminal Code of 1961. It is limited, as are the other statutes in the Criminal Code, by the provisions of Ill. Rev. Stat. ch. 38, § 4-3 (1967).

Section 4-3(a) provides that a person is not guilty of an offense, other than an offense which involves absolute liability, unless with respect to each element described by the statute defining the offense, he acts while having one of the mental states described subsequently in the Code. Section 4-3(b) further provides in pertinent part:

> If the statute does not prescribe a particular mental state applicable to an element of an offense. . ., any

mental state defined in Sections 4-4 [defining "Intent"], 4-5 [defining "Knowledge"], or 4-6 [defining "Recklessness"] is applicable.

The Mob Action statute does not involve absolute liability.[70] Therefore, a person cannot be guilty of the conduct proscribed by the Mob Action statute unless he intentionally,[71] knowingly,[72] or recklessly[73] engages in such conduct. These requirements substantially narrow the scope of the offense. They clarify and limit it and supply objective standards for the adjudication of guilt.[74]

70. *See* Ill. Rev. Stat. ch. 38, § 4-9 (1967).

71. A person intends, or acts intentionally or with intent, to accomplish a result or engage in conduct described by the statute defining the offense, when his conscious objective or purpose is to accomplish that result or engage in that conduct. Ill. Rev. Stat. ch. 38, § 4-4 (1967).

72. A person knows, or acts knowingly or with knowledge of:

(a) The nature or attendant circumstances of his conduct, described by the statute defining the offense, when he is consciously aware that his conduct is of such nature or that such circumstances exist. Knowledge of a material fact includes awareness of the substantial probability that such fact exists.

(b) The result of his conduct, described by the statute defining the offense, when he is consciously aware that such result is practically certain to be caused by his conduct.

Conduct performed knowingly or with knowledge is performed wilfully, within the meaning of a statute using the latter term, unless the statute clearly requires another meaning. Ill. Rev. Stat. ch. 38, § 4-5 (1967).

73. A person is reckless or acts recklessly, when he consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow, described by the statute defining the offense; and such disregard constitutes gross deviation from the standard of care which a reasonable person would exercise in the situation. An act performed recklessly is performed wantonly, within the meaning of a statute using the latter term, unless the statute clearly requires another meaning. Ill. Rev. Stat. ch. 38, § 4-6 (1967).

74. The incorporation in the Mob Action statute of these requisite mental states by reference would not seem defective to the clarity of this statute. The regulatory system established by these five statutes is not so formidably elaborate and complex as to discourage expression by minority groups through fear of a regulatory

Moreover, in light of these requirements it can not be said that the inclusion of the word "participant" in a statute aimed primarily at the use of force and violence vests police with unfettered discretion. Certainly, the interest of the state in preserving the peace requires that police have the discretion to arrest those who utilize force and violence. Thus, the discretion vested in the police by this provision seems to be the type of narrow discretion which the Supreme Court has recognized as the proper role of responsible officials in making determinations concerning the imminence of disorder.[75] In addition, the applicability of this provision is further limited by the phrase "mob action which shall by violence inflict injury to the person or property of another." This phrase restricts the proper exercise of police discretion under this section to those situations in which violence has already erupted. We conclude, therefore, that this provision is sufficiently narrow and specific.

Subsection (d) similarly provides penalties in regard to "any participant in a mob action who does not withdraw on being commanded to do so by any peace officer." *Amici curiae* have also challenged the clarity and scope of this provision, pointing again to the inclusion of the word "participant" and suggesting that it is too vague and broad. As stated above, the requisite mental states which have been incorporated by reference into this provision sufficiently clarify and narrow its scope and preclude its application to peaceful participants or innocent bystanders. The additional requirement of a refusal to withdraw does

imbroglio. *See* Note 80 Harv. L. Rev. 1773, 1778 (1967). This situation is a far cry different from that in *Keyishian* v. *Board of Regents*, 385 U. S. 589 (1967), where the appellants were confronted by several statutes, numerous regulations and intricate administrative machinery regarding teacher loyalty oaths.

75. *See Chaplinsky* v. *New Hampshire*, 315 U. S. 568, 573 (1942). *Cf. New York* v. *Feiner*, 340 U. S. 315 (1951).

not subvert this conclusion.[76] On the contrary, it further limits the scope of the enactment as a whole, and the discretion of those charged with its enforcement. It is clear, therefore, that this provision cannot be challenged on these grounds.

Lest there be any doubt concerning what we conceive to be the narrow scope of this section as properly interpreted, it does not constitute an offense hereunder for a participant in a peaceful demonstration to refuse to withdraw on command of a peace officer. Peaceful demonstrations do not constitute "mob action" under the statute.

THE RESISTING OR OBSTRUCTING A PEACE OFFICER STATUTE.

Plaintiffs also contend that the Illinois "Resisting Arrest" statute, Ill. Rev. Stat. ch. 38, § 31-1, is void both for reasons of vagueness and overbreadth. It provides:

> A person who knowingly resists or obstructs the performance by one known to the person to be a peace officer of any authorized act within his official capacity shall be fined not to exceed $500 or imprisoned in a penal institution other than a penitentiary not to exceed one year, or both.

This statute has likewise not been construed by the Illinois Courts. We must, therefore, again place our own construction upon it, giving the words their reasonable and natural construction.

This statute is designed to deter a person from resisting or interfering with the acts of law enforcement officials, simply on the basis of the person's own conclusion as to the impropriety of the act. It thus furthers the legitimate

76. Indeed, in *Cox* v. *Louisiana*, the Supreme Court indicated that such a withdrawal provision is constitutionally permissible if embodied in a statute which is otherwise sufficiently narrow and precise and which protects a justifiable state interest. *See* 379 U. S. at 551.

state interest in protecting peace officers, preventing frustration of the valid enforcement of the law, and promoting orderly and peaceful resolution of disputes.[77] It is obvious, therefore, that this statute is not directed at peaceful assembly. Its enforcement, at times, may conflict with assembly, but in such instances, the public interest in discouraging violence and insisting upon the use of peaceful methods of obtaining redress from unlawful acts outweighs the recognition of the feelings of the demonstrators.[78]

The gist of the offense is "resisting" or "obstructing" the valid acts of a peace officer. These terms convey commonly recognized meanings. "Resisting" or "resistance" means "withstanding the force or effect of" or the "exertion of oneself to counteract or defeat."[79] "Obstruct" means "to be or come in the way of."[80] These terms are alike in that they imply some physical act or exertion. Given a reasonable and natural construction, these terms do not proscribe mere argument with a policeman about the validity of an arrest or other police action, but proscribe only some physical act which imposes an obstacle which may impede, hinder, interrupt, prevent, or delay the performance of the officer's duties, such as going limp, forcefully resisting arrest or physically aiding a third party to avoid arrest.[81]

The statute further requires that the person resists or obstructs "knowingly" and that the officer be in the performance of an "authorized act within his official capacity." The term "knowingly" is specifically defined in

77. *Cf.* Warner, *The Uniform Arrest Act*, 28 Va. L. Rev. 316 (1942).

78. *Cf.* Warner, *supra* note 77 at 330-31.

79. Webster, New International Dictionary n. 1 & 2 (3d ed. 1964 Unabridged).

80. Webster, New International Dictionary n. 2 (3d ed. 1964 Unabridged).

81. *Cf.* In Re Bacon, 49 Cal. Rptr. 322, 333 (1st Dist. 1966).

the Criminal Code.[82] It considerably narrows the scope of the enactment by exempting innocent or inadvertent conduct from its proscription. The term "authorized act," although not specifically defined in the Code, is not so obscure that men of common intelligence would differ as to its import. "Authorize" is defined as "to endow with authority or effective legal power, warrant, or right."[83] In the context of the statute the phrase "authorized act," given a reasonable and natural construction, means the legal or legally effective acts of an officer.[84] This phrase thus narrows the scope of the offense still further to include only resistance or obstruction of the legal acts of police and other officers.[85] For instance, resistance to an illegal search and seizure would not be proscribed.

Nevertheless, plaintiffs contend that the statute permits police to exercise wholly arbitrary and capricious discretion in regard to group assemblies. Under the language of this statute, they argue, a peace officer need only decree on the spot that the most peaceful assembly be broken up and any failure on the part of a citizen to comply with such an order subjects him to the penalties of this statute. They contend that the *in terrorem* effect

82. *See* note 72 *supra*.

83. Webster, New International Dictionary n. 4 (3d ed. 1964 Unabridged).

84. *Cf.* Ill. Rev. Stat. Ann. ch. 38, § 31-1 (Smith-Hurd 1964) (Committee Comments). An analogous United States statute describing "Assault on a Process Server," 18 U. S. C. § 1501, has been similarly construed to prohibit only resistance or obstruction of a law officer while in the performance of a legally effective act. *See, e.g., Sparks* v. *United States*, 90 F. 2d 61 (6th Cir. 1937); *Briggs* v. *United States*, 24 F. 2d 961 (9th Cir. 1924).

85. There is an exception to this rule in another section of the Illinois Criminal Code. If the act which is resisted or obstructed is the making of an arrest, a private person is not authorized to resist such arrest with force even though he knows the arrest is unlawful. *See* Ill. Rev. Stat. ch. 38, § 7-7 (1967). *See, also*, Ill. Rev. Stat. Ann. ch. 38, § 31-1 (Smith-Hurd 1964) (Committee Comments).

on the right of peaceful assembly arising from the potential misapplication of this statute requires, therefore, that it be declared unconstitutional.

This argument is unpersuasive for two reasons. First, the plaintiffs have not given the statute a reasonable construction. It does not proscribe resisting or obstructing an unlawful act of a peace officer. The guilt or innocence of the defendant specifically depends on the validity of the officer's act. Therefore, if a policeman erroneously, capriciously, or arbitrarily orders peaceful demonstrators to disperse, acts of resistance or obstruction by the demonstrators would not subject them to criminal liability under this provision.

Second, the basis of plaintiffs' argument is not the scope of the enactment, but its possible misapplication. The constitutionality of a statute, however, is not dependent on its susceptibility of misapplication. For every statute is susceptible of abuse, misuse or misapplication. Rather, its validity depends on whether the language of the statute, given its normal meaning, is so broad that it intrudes upon Constitutional rights.[86] If the language is so broad that its sanctions may be applied indiscriminately to constitutionally protected conduct, as well as to conduct which may properly be proscribed, it violates substantive due process and, therefore, is unconstitutional.

The instant statute, however, does not contain such overreaching language. While admittedly, like any statute, it may be misapplied, its sanctions apply only to knowing physical resistance or obstruction of a valid act of a peace officer. These sanctions, therefore, do not ultimately depend on the subjective views of those charged with its enforcement. Consequently, we conclude that it is neither vague nor overbroad.

86. *See* authorities cited notes 41-43, *supra* and accompanying text.

THE INTIMIDATION STATUTE.

Plaintiffs further attack the Illinois Intimidation Statute, Ill. Rev. Stat. ch. 38, § 12-6. Although none of the plaintiffs currently face prosecution under this provision, they contend that it has a chilling effect on their exercise of First Amendment freedoms of speech, assembly, and petition, by reason of its vagueness and overbreadth. They fear that it will be used to punish them for threatening to engage in "direct action and protest activities" if political, economic, and social institutions do not meet their demands for an end to racial discrimination.

The statute provides:

> (a) A person commits intimidation when, with intent to cause another to perform or to omit the performance of any act, he communicates to another a threat to perform without lawful authority any of the following acts:
>
> (1) Inflict physical harm on the person threatened or any other person or on property; or
>
> (2) Subject any person to physical confinement or restraint; or
>
> (3) Commit any criminal offense; or
>
> (4) Accuse any person of an offense; or
>
> (5) Expose any person to hatred, contempt or ridicule; or
>
> (6) Take action as a public official against anyone or anything, or withhold official action, or cause such action or withholding; or
>
> (7) Bring about or continue a strike, boycott or other collective action.
>
> (b) Penalty. . . .

The statute is a section of the Illinois Criminal Code of 1961. According to a revisor's note, it replaces eighteen sections of the prior criminal code which proscribed an array of activities by private persons and public officials.[87]

87. *See* Ill. Rev. Stat. ch. 38, §§ 240-246, 376-383, 456-464 (1960 repealed).

The Illinois Supreme and Appellate Courts have not had occasion to construe the statute, and in the posture of this case, we are without benefit of a lower state court's construction. Under these circumstances, we must again place our own construction upon it, giving words their reasonable and natural meaning.

This statute is an omnibus provision designed to prohibit all manner of threats and unlawful communications intended to compel a person to act against his will.[88] The State of Illinois unquestionably has a legitimate interest in protecting persons from coercion by threats, even deemed an abridgment of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed."[89] However, at the outset of this analysis it should be recognized that Illinois has no legitimate interest in proscribing as intimidation statements that have no reasonable tendency to coerce or statements which, although alarming, are not expressions of an intent to act.

Legitimate political expression intended to secure changes in a society's legal, political, social, or economic structure frequently takes the form of expressions about future events or conditions. Such expression may be in the form of promises, predictions or warnings, or threats of lawful action.

While we doubt that threats of the character proscribed

88. It is supplemental to other sections of the Criminal Code of 1961, which proscribe theft by means of threat, Ill. Rev. Stat. ch. 38, §§ 16-1, 16-3 (1967), deceptive practices, Ill. Rev. Stat. ch. 38, § 17-1 (1967), and official misconduct, Ill. Rev. Stat. ch. 38, § 33-3 (1967). The latter, more specific statutes cover the common law crimes of extortion and blackmail.

89. *Giboney* v. *Empire Storage & Ice Co.*, 336 U. S. 490, 502 (1949). *See, also, Cox* v. *Louisiana*, 379 U. S. 559, 563 (1963); *Fox* v. *Washington*, 236 U. S. 273, 277 (1915); *Chaplinsky* v. *New Hampshire*, 315 U. S. 568, 571-72 (1942).

by the Illinois Intimidation statute are legitimate forms of expression, the point at which legitimate expression becomes coercive expression of unlawful intent is not easily determined, especially in the heat of public debate. The freedoms of expression, however, are extremely vulnerable to excessive restriction. "The threat of sanctions may deter their exercise almost as potently as the actual application of sanctions. . . . Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity."[90] The necessity for such "breathing space" requires that only threats of substantial evil be proscribed.[91]

The elements of the offense of intimidation are set forth in paragraph (a). Seven sub-paragraphs specify various acts which may not be threatened if the elements of paragraph (a) are met.

There are three elements of the offense of intimidation defined in paragraph (a) of § 12-6. First, there must be a threat to perform without lawful authority one of the acts specified in the statute. Second, there must be a communication of the threat to another, not necessarily the person threatened. Third, there must be an accompanying intent to cause another to perform or omit the performance of an act.

The term "threat" has a sinister and well-defined meaning in common parlance and in the law. It is "the expression of an intention to inflict evil or injury on another."[92] It is more than a mere expression of such an intent; it is

90. *N. A. A. C. P.* v. *Button*, 371 U. S. 415, 433 (1963). *See also, New York Times Co.* v. *Sullivan*, 376 U. S. 254, 271-72 (1964); *Cantwell* v. *Connecticut*, 310 U. S. 296, 311 (1940).

91. *See, e.g., Dennis* v. *United States*, 341 U. S. 494, 507-510 (1951); *Martin* v. *Struthers*, 319 U. S. 141, 143-44 (1943); *Schneider* v. *State*, 308 U. S. 147, 161 (1939).

92. Webster, New International Dictionary, n. 1a (3d ed. 1964 Unabridged).

"a menace; especially, any menace of such a nature and extent as to unsettle the mind of the person on whom it operates, and to take away from his acts that free and voluntary action which alone constitutes consent."[93] It is not the abstract meaning of words that constitute an expression a threat, but their reasonable tendency under the circumstances to place another in fear that the threat-maker will perform the threatened act. An innocent expression may be threatening because of the ominous circumstances in which it is made. Similarly, a statement that is literally a declaration of intent to do harm to another is not a threat if the context negatives any reasonable apprehension that the speaker intends what he says he intends.

Implicit in the word "threat", as it is used in a criminal statute, is this requirement: that the expression in its context have a reasonable tendency to create apprehension that its originator will act according to its tenor.

We find this implicit in the Illinois Intimidation Statute. The Illinois Appellate Court placed such a construction on the word "threat" in an extortion statute which § 12-6 replaced.[94]

The statute does not prohibit every threat communicated with the required intent, but only those to perform "without lawful authority" any of seven specified acts. "Authority" is defined as "legal or rightful power; a right to command or to act; power exercised by a person in virtue of his office or trust; dominion; jurisdiction; authorization."[95] In the broad sense of this definition lawful authority is the legal right or power to act. In the narrow sense it is the official power or jurisdiction to act.

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93. Black, Law Dictionary (4th ed. 1951).

94. *See Moore* v. *People*, 69 Ill. App. 398, 401 (1896).

95. Webster, New International Dictionary n. 1 (3d ed. 1964 Unabridged).

The private citizen has lawful authority in the broad sense to perform most of those acts specified in the Illinois Intimidation Statute under certain circumstances. He is sometimes justified in using force against another,[96] or in physically restraining another.[97] He has the power to initiate criminal prosecution against another and the right to give information and testimony against another. He may make statements injurious to another's reputation, provided he does not commit defamation. He may engage in collective action in all save a few forms.

If "lawful authority" is confined to the narrow meaning of official power conferred by law, the private citizen, by definition a person without official power, has no "authority" to perform any of the acts specified in the intimidation statute. Placing such a meaning on the phrase "lawful authority" in the statute would result in an unreasonable and unnatural construction. Such a construction would make criminal the threat to do lawful acts, including acts expressly permitted by the Criminal Code, in the most legitimate circumstances. It would, for example, make criminal a threat to use justified force in defense of person or property and a threat to file legitimate criminal charges.

Given a reasonable and natural construction, the statute prohibits only threats to do any of the specified acts if the doing of that act would be unlawful considering the circumstances existing when the threat is made and giving effect to the qualifications contained in the threat. The phrase "without lawful authority" is not limited to criminal illegality; an act without lawful authority may be either a crime or a tort, or both. The statute therefore refers to some of the provisions of Illinois criminal and civil law. In this respect the offense of intimidation resembles the inchoate offenses of solicitation, conspiracy,

96. *See* Ill. Rev. Stat. ch. 38, Art. 7 (1967).

97. *See* Ill. Rev. Stat. ch. 38, §§ 7-6, 7-9, 10-3 (1967).

and attempt, which refer to other provisions of the criminal law.[98]

Since the statute incorporates some of the provisions of criminal and civil law, all the defenses that would have been available to the accused if he had carried out his threat and had been prosecuted or sued for doing so are available to him in a prosecution for intimidation.[99] This is implicit in the statute and consistent with that section of the Illinois Criminal Code which provides: "It is a defense to a charge of solicitation or conspiracy that if the criminal object were achieved the accused would not be guilty of an offense." Ill. Rev. Stat. ch. 38, § 8-3 (1967).

The remainder of paragraph (a) requires little interpretation. The required state of mind is an intent to cause another to act or refrain from acting by inducing fear that the threat will be carried out if he does not act or refrain. The required communication may be by any means.

Sub-paragraph (a)(1) prohibits threats to "inflict physical harm on the person threatened or any other person or, on property [without lawful authority]". The infliction of physical harm on another or on property is always unlawful, unless it is justified in defense of person or property or in protection of public health, safety, welfare or morals. The situations in which force may be used against another are defined in the Criminal Code.[100] It is readily apparent, therefore, that a threat to inflict physical harm on another or on property, when communicated with intent to coerce, would violate the intimidation statute unless the use of the force threatened would be justified. Similarly, it cannot

98. *See* Ill. Rev. Stat. ch. 38, art. 8 (1967).

99. There is an obvious exception. He could not defend on the ground that performance of the threatened act was impossible because of some fact unknown to the person threatened. *Cf.* Ill. Rev. Stat. ch. 38, § 8-4(b) (1967).

100. *See* Ill. Rev. Stat. ch. 38, §§ 7-6, 7-9, 10-1, 10-2, 10-3 (1967).

be said that threats of physical harm to person or property are an insubstantial evil. Indeed, principles of individual liberty require that persons be protected from the apprehension engendered by such threats. This provision, therefore, is neither vague nor overbroad.

Sub-paragraph (a)(2) makes criminal threats to "subject any person to physical confinement or restraint [without lawful authority]." The limits of lawful authority to confine and restrain another are found in the law governing criminal procedure, the law of guardian and ward, domestic relations law, and certain health laws. The private citizen is seldom justified in restraining another.[101] It is thus apparent that unless such justification exists, or would exist if the qualifications in the threat were given effect, a threat to restrain or confine another is intimidation. This proscription is obvious to men of common intelligence.

Likewise, it is not overreaching. Threats of false imprisonment or unlawful restraint pose a substantial evil which the state has a legitimate interest in preventing. Given its reasonable and natural construction, the phrase "without lawful authority" excepts threats to restrain in situations where the law recognizes justifiable restraint. This provision's scope, therefore, is narrow and precise.

Sub-paragraph (a)(3) prohibits threats to "commit any criminal offense." The qualifying phrase, "without lawful authority," is redundant as applied to this sub-paragraph, since a criminal offense, by definition cannot be committed with lawful authority. The word "offense" is defined in the Illinois Criminal Code as meaning "a violation of any penal statute of this State."[102] Consequently, the sub-paragraph makes criminal threats to violate any Illinois statute imposing a penalty. The addition of the adjective "criminal" does not narrow the meaning of this provison.

101. *See* Ill. Rev. Stat. ch. 38, §§ 7-6, 7-9, 10-1, 10-2, 10-3 (1967).
102. *See* Ill. Rev. Stat. ch. 38, § 2-12 (1967).

The provision is not vague. It is, however, overbroad since it prohibits threats of insubstantial evil. The commission of criminal offenses against persons or property is a substantial evil, and the state may legitimately proscribe the making of threats to commit such offenses. The commission of offenses against public order *only*, however, is not such a substantial evil that the state may prohibit the threat of it. Sub-paragraph (a)(3) proscribes threats to violate *any* penal statute. It therefore makes criminal threats such as the following: (1) threats by dissentient groups to engage in disorderly conduct,[103] threats by residents of a high-crime neighborhood to carry concealed weapons for their own protection,[104] and threats by mothers to block a dangerous state highway to demonstrate the need for increased safety measures.[105] Indeed, the phrase "commit any criminal offense" is so broad as to include threats to commit misdemeanors punishable by fine only. These evils are not so substantial that the state's interest in prohibiting the threat of them outweighs the public interest in giving legitimate political discussion a wide berth.

Since the language of sub-paragraph (a) (3) is an overbroad restriction on freedom of speech, it is invalid. Obviously, however, if the threat is carried out, the persons who violate the criminal law by their acts are subject to punishment. Therefore, we hold only that making it an offense to threaten to commit any crime, no matter how minor or insubstantial, is an unwarranted limitation.

Sub-paragraph (a) (4) prohibits threats to "accuse any person of an offense [without lawful authority]." "Accuse . . . of an offense" has both a technical and a nontechnical meaning. In its technical sense it means "to bring

103. *See* Ill. Rev. Stat. ch. 38, § 26-1 (1967).

104. *See* Ill. Rev. Stat. ch. 38, § 24-1(4) (1967).

105. *See* Ill. Rev. Stat. ch. 95½, § 197 (1958).

a formal charge . . . before a court or magistrate having jurisdiction to inquire into the alleged crime."[106] In its non-technical sense it means to make allegations that another has committed an offense. Such an allegation made only in the presence of the person accused would not be coercive, and a threat to unlawfully publish such an allegation would fall within sub-paragraph (a) (5). For these reasons, we believe the phrase should be given its technical meaning in sub-paragraph (a) (4).

The filing of a criminal charge against another is "without lawful authority" only if the person accused is innocent of the charge and the accuser acts with malice and without probable cause to suspect that the accused committed the crime.[107] The threat to accuse another of an offense violates the intimidation statute only if the person threatened is innocent and the threat-maker, at the time he communicates the threat, had no reasonable grounds for his suspicion. Malice can be inferred from the threat-maker's intent to coerce another by inducing a fear of prosecution.

This provision is neither vague nor overbroad. It clearly proscribes only threats of false, malicious, and unfounded prosecution. Such threats are well outside the ambit of protected speech.

Sub-paragraph (a) (5) makes criminal threats to "expose another to hatred, contempt or ridicule [without lawful authority]." This phrase is taken from the definition of libel and slander.[108] The exposure of another to hatred, contempt or ridicule is unlawful when it constitutes libel, slander, invasion of privacy, or criminal libel. In a prosecution for violation of this sub-paragraph the state would be required to prove, in addition to the other elements of

106. Black, Law Dictionary (4th ed. 1951).

107. *See Cowper* v. *Vannier*, 20 Ill. App. 2d 499, 500-01 (1959).

108. *See New York Times* v. *Sullivan*, 376 U. S. 254, 279-80 (1964).

the intimidation statute, that the threat-maker's execution of his threat would have constituted one of those torts or crimes *given his state of mind and the circumstances existing at the time the threat was made.* For example, if the person whose exposure was threatened were a public official and the threatened statements related to his official conduct, the state would be required to prove that the threat-maker knew the statements were false or did not know whether they were true or false.[109] This sub-paragraph is neither vague nor overbroad. It proscribes threats to defame and certain threats to invade privacy. Considering federal constitutional limitations on the law of libel and slander, particularly where public officials are concerned, such threats are not protected. Nor is their protection essential to the protection of legitimate political expression.

Sub-paragraph (a) (6) prohibits two forms of threats. First, it prohibits threats to "take action as a public official against anyone or anything, or withhold official action [without lawful authority]." The Illinois Criminal Code defines "public officer" as "a person who is elected to office pursuant to statute, or who is appointed to an office which is established, and the qualifications and duties of which are prescribed by statute, to discharge a public duty for the State or any of its political subdivisions,"[110] and defines "public employee" as "a person, other than a public officer, who is authorized to perform any official function on behalf of, and is paid by, the State or any of its political subdivisions."[111] In using the term "public official" in the intimidation statute, the legislature apparently intended to reach both public officers and public employees. This con-

109. *See New York Times* v. *Sullivan*, 376 U. S. 254, 279-80 (1964).

110. Ill. Rev. Stat. ch. 38, § 2-18 (1967).

111. Ill. Rev. Stat. ch. 38, § 2-17 (1967).

struction of the term "public official" is consistent with the definition of "official" in the Criminal Code's article prohibiting civil rights violations.[112] Consistent with these definitions, the term "official action" must be construed to mean any governmental action, ministerial as well as discretionary. The sub-paragraph therefore prohibits any threat made by a public officer or employee to take or withhold governmental action.

Second, the sub-paragraph prohibits threats to "cause [without lawful authority] such action or withholding." "[S]uch action or withholding" refers to a public officer's or public employee's taking or withholding of governmental action. The verb "cause" when used to define the intent element of the offense of intimidation has a definite meaning. Its context there gives it an active, positive connotation. Similarly, when used in sub-paragraph (a) (6) to define one of the acts which may not be threatened, its meaning is certain. It has an active, positive connotation to effect, to compel, to take action, to bring about.

The state has a legitimate and substantial interest in precluding public officials or persons purportedly influential with public officials from threatening official action or the withholding thereof for the purpose of inducing the person threatened to take some action desired by the public official or one purporting to have influence with a public official. Nor, as we have indicated, are threats generally within First Amendment protection.

In our reading of this sub-paragraph, we do not interpret it to include threats by one public official or employee to another, but rather only threats by public officials or persons associated with them to individuals outside the area of government who are unable to protect themselves from abuse of official authority or power and may therefore be coerced or intimidated by such threats.

112. *See* Ill. Rev. Stat. ch. 38, § 13-1(e) (1967).

In the light of all of the foregoing, we conclude that sub-paragraph (a) (6) is valid.

Sub-paragraph (a) (7) makes criminal threats to "bring about or continue a strike, boycott or other collective action [without lawful authority]." While the terms "bring about" and "collective action" are not crystal clear, they are not so vague and indefinite that persons of normal intelligence will have difficulty in understanding their meaning. The remaining language of the sub-paragraph is quite clear. It prohibits threats to unlawfully continue strikes or boycotts. It is unlawful to continue a strike or boycott only if the strike or boycott is unlawful. They are unlawful in certain circumstances by virtue of the National Labor Relations Act,[113] state labor statutes, and state and federal trade regulation laws. They also may be unlawful because of the means by which they are pursued.

Prohibiting the use of threats to cause or continue unlawful strikes, boycotts or similar action in order to coerce or intimidate persons to perform or omit the performance of acts which the person threatening desires to have performed or omitted is within the police power of the state. Nor is such a threat within First Amendment protection.

We recognize that the conclusion of validity may inhibit the making of threats which some persons may deem desirable, e.g., the threat of a teachers' strike which would be an unlawful strike under Illinois law. We do not determine that the sub-paragraph in question would even be applicable to such a threat. Nor do we seek to determine its constitutionality under any and all circumstances. We hold simply that given a legitimate state interest, statutory language understandable by persons of common intelligence and no impingement on protected activity, the provision is valid. Its possible unconstitutional application in a given

113. 29 U. S. C. A. §§ 151 et seq.

factual situation we leave to that case when and if it ever arises.

Amici curiae have argued that the statute generally is impermissibly vague because it refers to other provisions of criminal and civil law that may be vague. The reference to other provisions of criminal and civil law is not for the purpose of explaining vague language in the instant statute,[114] but for the purpose of defining the acts which may not be threatened. The argument advanced by *amici curiae* would deny the state the power to prohibit intimidation and the inchoate offenses except by a compendious statute. This is neither practical nor constitutionally required.

We recognize that the intimidation statute does not furnish a definite standard to the extent that the provisions of criminal and civil law referred to may be vague. The constitutional infirmity resides in those provisions, however, not in the intimidation statute, and the proper remedy is clarification or invalidation of them.

Conclusion.

In conclusion, a few general observations which are relevant to our opinion and decision here should be made explicit although they are implicit therein.

First, a presumption of validity attaches to legislative enactments.[115]

Second, if the normal and natural construction of statutory language or even a narrow interpretation thereof

114. *Cf. Keyishian* v. *Board of Regents*, 385 U. S. 589, 604 (1967).

115. *See, e.g., Goldblatt* v. *Town of Hempstead*, 369 U. S. 590, 595-96 (1961); *Flemming* v. *Nestor*, 363 U. S. 603, 611 (1960); *Sabel* v. *Adams*, 208 F. Supp. 316, 324 (S. D. Fla. 1962).

will preserve the constitutionality of a statute, it must be sustained.[116]

Third, only if the statutory language is so vague and indefinite that men of common intelligence will not be able to understand it and regulate their conduct accordingly, or if in its normal and natural meaning it is overbroad and proscribes conduct constitutionally protected, may it be held unconstitutional and void.[117]

Fourth, the fact that a statute may be misapplied, misused or abused does not render the statute invalid; self-enforcing or foolproof laws have not yet been invented.

Fifth, the interpretation of a state statute by a lower federal court is not necessarily binding on the state courts, though the two sections of the Illinois Criminal Code which we have found to be invalid appear to us to be clearly unconstitutional.

Finally, we would make two related observations. The declaration of validity and constitutionality here made with respect to the various statutes is predicated on the construction and interpretation of each set forth herein. To the extent that the state courts may make other and broader interpretations or constructions, the holdings here would necessarily be subject to reexamination.

Conversely, we recognize that while we have held these statutes to be valid as we construe and interpret them, their application in specific instances may give rise to further constitutional questions. No declaratory judgment as to the constitutionality of a statute can anticipate and determine all future cases which may arise thereunder. We have endeavored to delineate guidelines of construc-

116. *See, e.g., Chaplinsky* v. *New Hampshire*, 315 U. S. 568 (1942); *Cox* v. *New Hampshire*, 312 U. S. 569 (1941); *Cf. Harris* v. *United States*, 347 U. S. 612 (1954).

117. See authorities cited notes 38-43 *supra* and accompanying text.

tion and interpretation which balance the legitimate interest and duty of the state to preserve the peace, and the constitutionally protected rights of free speech, peaceful assembly and peaceful demonstration guaranteed by the First Amendment to every citizen. Inevitably, in practical application, further questions will arise.

Judgement will be entered in accordance with the declarations and conclusions reached herein.

JUDGMENT ORDER.

The above cause came on regularly for hearing before the Court on January 27, 1968, and was duly submitted for consideration and decision, and the Court on 1st day of March, 1968, made its decision, and filed its memorandum opinion. Now, therefore, pursuant thereto,

IT IS HEREBY ORDERED AND DECREED BY THE COURT AS FOLLOWS:

1. That sub-section (a) (2) of Ill. Rev. Stat. ch. 38, § 25-1 (1967), which defines and proscribes the penal offense of "Mob Action" is hereby declared unconstitutional, null, and void in that it violates the due process clause of the Fourteenth Amendment of the Constitution of the United States.

2. That the remainder of Ill. Rev. Stat. ch. 38, § 25-1 (1967), which defines and proscribes the penal offense of "Mob Action" and which fixes the penalties therefor, is consistent with the due process clause of the Fourteenth Amendment of the Constitution of the United States and therefore valid.

3. That Ill. Rev. Stat. ch. 38, § 31-1 (1967), which defines and proscribes the penal offense of "Resisting or Obstructing a Peace Officer" and fixes the penalty therefor is consistent with the due process clause of the Fourteenth Amendment of the Constitution of the United States and valid.

4. That sub-section (a) (3), of Ill. Rev. Stat. ch. 38, § 12-6 (1967), which defines and proscribes the penal offense of "Intimidation" is hereby declared unconstitutional, null and void in that they violate the due process clause of the Fourteenth Amendment of the Constitution of the United States.

5. That the remainder of Ill. Rev. Stat. ch. 38, § 12-6 (1967), which defines and proscribes the penal offense of "Intimidation" and which fixes the penalty thereon is consistent with the due process clause of the Fourteenth Amendment of the Constitution of the United States and therefore valid.

6. The Court retains jurisdiction of this action to determine the other claims raised in the complaint and to render additional relief if necessary.

Dated at Chicago, Illinois, this 1st day of March, 1968.

JOHN S. HASTINGS,
United States Circuit Judge.

JULIUS J. HOFFMAN,
United States District Judge.

HUBERT L. WILL,
United States District Judge.

IN THE UNITED STATES DISTRICT COURT.

[Title Omitted.]

DECREE FOR PERMANENT INJUNCTION.

This cause having come on to be heard by a Three Judge Court pursuant to 28 U. S. C. 2281 and 2284, counsel for the plaintiffs and defendants having been fully heard, and the Court having examined the briefs filed by the respective parties, and having filed herein its findings of fact, conclusions of law and declaratory judgment on March 4, 1968, declaring that ch. 38, § 25-1 (a) (2), and ch. 38, § 12-6 (a) (3), Ill. Rev. Stat. 1967, are unconstitutional and void, and having directed that judgment be entered in accordance therewith; now therefore, by reason of the law and findings aforesaid.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the defendants, their employees, servants, and agents, be and they are hereby perpetually enjoined and restrained from the enforcement of or the prosecution under ch. 38, § 25-1 (a) (2) and ch. 38, § 12-6 (a) (3), Ill. Rev. Stat. 1967, said sub-sections having been declared unconstitutional and void.

Dated this 2nd day of April, A. D. 1968.

ENTER:

JOHN S. HASTINGS,
JULIUS HOFFMAN,
HUBERT WILL,
Judges of the United States District Court, Northern District, Eastern Division.

In the United States District Court.

[Title Omitted.]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES.

I. Notice is hereby given that John S. Boyle, Chief Judge of the Circuit Court of Cook County, Illinois John J. Stamos, State's Attorney of Cook County, Illinois, Joseph I. Wood, Sheriff of Cook County, Illinois, Maurice W. Lee, Magistrate, Circuit Court of Cook County, Illinois, and John J. Limperis, Magistrate, Circuit Court of Cook County, Illinois, defendants herein, hereby appeal to the Supreme Court of the United States from that portion of the Decree for Permanent Injunction, entered April 2, 1968, which perpetually enjoins and restrains the aforesaid defendants from the enforcement of or the prosecution of the said Chapter 38, § 12-6 (a)(3), Illinois Revised Statutes, 1967, said sub-section having been declared unconstitutional and void.

II. This appeal is taken pursuant to 28 U. S. C. § 1253.

Edward J. Hladis,
500 Chicago Civic Center,
Chicago, Illinois 60602,
Chief of the Civil Division, Office of State's Attorney of Cook County, Illinois, Attorney for John S. Boyle, John J. Stamos, Joseph I. Wood, Maurice W. Lee and John J. Limperis.

APPENDIX B.

IN THE UNITED STATES DISTRICT COURT.

[Title Omitted.]

COMPLAINT.

The Plaintiffs by their Complaint allege as follows:

1. This is a class action brought by the Plaintiffs pursuant to Rule 23(a), (1), (3), of the Federal Rules of Civil Procedure on their own behalf and on behalf of all others similarly situated. Plaintiffs and others similarly situated comprise one class, and certain of these Plaintiffs also bring this action on their own behalf and on behalf of all others similarly situated as Sub-Class One. Certain other Plaintiffs bring this action on their own behalf and on behalf of all others similarly situated as Sub-Class Two. Certain other Plaintiffs bring this action on their own behalf and on behalf of all others similarly situated as Sub-Class Three. Certain other Plaintiffs bring this action on their own behalf and on behalf of all others similarly situated as Sub-Class Four. Certain other Plaintiffs bring this action on their own behalf and on behalf of all others similarly situated as Sub-Class Five. Certain other Plaintiffs bring this action on their own behalf and on behalf of all others similarly situated as Sub-Class Six. Certain other Plaintiffs bring this action on their own behalf and on behalf of all others similarly situated as Sub-Class Seven. These seven classes have common claims and they therfore bring this civil action together.

1. PARTIES.

2. Plaintiffs, Rommell Muller, Joseph H. Reynolds and David A. Reynolds, members of Sub-Class One, are Negro citizens who were arrested on August 1, 1967, in the City of Chicago, Illinois, and were charged with violations of certain statutes of the State of Illinois, to-wit: Ill. Rev. Stats., Ch. 38, Sections 25-1 (a), (1) and (2); and 31-1, and with violations of certain ordinances of the City of Chicago, to-wit: Ch. 11-33, and Ch. 193-1. These Plaintiffs are residents of the City of Chicago, Illinois, and are citizens of the United States. They face criminal prosecution before the Circuit Court of Cook County, Illinois, seated in the City of Chicago. They sue on behalf of themselves and all others similarly situated which class is too numerous to bring before this Court.

3. Plaintiff, James Washington, and other persons, members of Sub-Class Two, are Negro citizens who were arrested on May 21, 1967, in the City of Chicago, Illinois, and are charged with violations of certain statutes of the State of Illinois, to-wit: Ill. Rev. Stats., Ch. 38, Sections 12(3); 12-4(B)(5); 25-(a) (1) and (2); and 31-1, and with violations of certain ordinances of the City of Chicago, to-wit: Ch. 11-33 and Ch. 193-1. They are residents of the City of Chicago and are citizens of the United States. Plaintiff, James Washington, faces criminal prosecution before the Circuit Court of Cook County, Illinois, seated in the City of Chicago. He sues on behalf of himself and all others similarly situated, which class is too numerous to bring to this Court.

4. Plaintiffs, Jerome Parker, and Rudy Hooper, members of Sub-Class Three, are Negro citizens who were arrested on or about September 14, 1967, in the City of Chicago, Illinois, and were charged with violations of

certain statutes of the State of Illinois, to-wit: Ill. Rev. Stats., Ch. 38, Sec. 25-1 (a), (1); 31-1, and with violations of certain ordinances of the City of Chicago, to-wit: Ch. 11-33 and Ch. 193-1. These Plaintiffs are residents of the City of Chicago, Illinois, and are citizens of the United States. They face criminal prosecution before the Circuit Court of Cook County, Illinois, seated in the City of Chicago. They sue on behalf of themselves and all others similarly situated, which class is too numerous to bring before this Court.

5. Plaintiffs, Arnold Ford, Bernard Hughes, Vissa Marie Turner, Wysingo Turner, Andrew Brown, Charles Fletcher, James Jones, and Herman Townsend, members of Sub-Class Four, are Negro citizens who were arrested on or about August 23, 1967, in the City of Chicago, Illinois, and charged with violations of certain statutes of the State of Illinois, to-wit: Ill. Rev. Stats., Ch. 38, Sec. 25-1, (a), (1); 31-1, and with violations of certain ordinances of the City of Chicago to-wit: Ch. 11-33 and Ch. 193-1. These Plaintiffs are residents of the City of Chicago, Illinois, and are citizens of the United States. They face criminal prosecution before the Circuit Court of Cook County, Illinois, seated in the City of Chicago. They sue on behalf of themselves and all others similarly situated which class is too numerous to bring before this Court.

6. Plaintiff, Frank Ditto, and other persons, members of Sub-Class Five are Negro citizens who were arrested on or about August 4, 1967, in the City of Chicago, Illinois, and charged with violations of certain statutes of the State of Illinois, to-wit: Ill. Rev. Stats., Ch. 38, Sec. 25 (a), (1), (2); 31-1; 12 (3); and with certain violations of certain ordinances of the City of Chicago, Illinois, to-wit: Ch. 193-1 and Ch. 11-33. They are residents of the City of Chicago, Illinois, and are citizens of the United States. Plaintiff, Frank Ditto, faces criminal prosecution before

the Circuit Court of Cook County, Illinois, seated in the City of Chicago. He sues on behalf of himself and all others similarly situated which class is too numerous to bring before this Court.

7. Plaintiff, ACT, it members, associates and supporters all being members of Sub-Class Six, are an unincorporated association, maintaining offices in the City of Chicago, Illinois, whose purpose is to help to secure to all Negro citizens the rights guaranteed to them under the Constitution of the United States, and to end all forms of racial segregation and discrimination in the interest of Negro and white citizens throughout the United States. In support of these purposes ACT, its staff and its supporters engage in all forms of legitimate protest activities, including, but not limited to picketing, demonstrations, rallies, mass meetings, voter registration drives, community organization and publication. ACT seeks to obtain its objectives through the utilization of the fundamental rights of free speech, press and assembly, and the right to petition the government for the redress of grievances.

8. Plaintiffs, Lawrence Landry, Robert Lucas and Robert Brown and Michael Rogers, are members of Sub-Class Seven. They are Negroes, and are representatives of the class of all Negroes in the City of Chicago. They are citizens of the United States. Said class, their members, friends and supporters are currently being intimidated in the exercise of their First Amendment rights through the wholesale use of unconstitutional statutes to prosecute members of the Negro community and to threaten, intimidate, hinder and deter said First Amendment rights. These Plaintiffs have in fact been intimidated, and are in fact deterred, hindered and prevented from exercising their said First Amendment rights; and particularly their rights of free speech and assembly because of the conduct of the Defendants hereinafter complained of.

9. Members of Sub-Class Seven above described are so numerous that joinder of all of their members herein is impractical. There are questions of law and of fact common to each sub-class; the sub-classes of the named Plaintiffs are typical of the claims of each other sub-class; and the named Plaintiffs will fairly and adequately protect the interests of each class. Defendants have acted on grounds generally applicable to the Plaintiffs in all sub-classes. Therefore, injunctive and declaratory relief is appropriate to the classes as a whole.

II. Defendants.

10. Defendant, Richard J. Daley, is a citizen of the State of Illinois and Mayor of the City of Chicago. He is sued individually and in his capacity as Mayor of the City of Chicago, Illinois.

11. Defendant, James Conlisk, is a citizen of the State of Illinois and Superintendent of Police of the City of Chicago, Illinois. He is sued individually and in his capacity as Superintendent of Police of the City of Chicago, Illinois.

12. Defendant, John S. Boyle, is a citizen of the State of Illinois and Chief Judge of the Circuit Court of Cook County, Illinois. He is sued individually and in his capacity as Chief Judge and as representative of the class of judges of the Circuit Court of Cook County, Illinois.

13. Defendant, John J. Stamos, is a citizen of the State of Illinois and State's Attorney of Cook County, Illinois. He is sued individually and in his capacity as State's Attorney of Cook County, Illinois.

14. Defendant, Joseph I. Wood, is a citizen of the State of Illinois and Sheriff of Cook County, Illinois. He is sued individually and in his capacity as Sheriff of Cook County, Illinois.

15. Defendant, Raymond F. Simon, is a citizen of the State of Illinois and Corporation Counsel for the City of Chicago, Illinois. He is sued individually and in his capacity as Corporation Counsel for the City of Chicago.

16. Defendant, Richard J. Elrod, is a citizen of the State of Illinois and an Assistant Corporation Counsel of the City of Chicago in charge of its Division of Ordinance Enforcement. He is sued individually and in his capacity as Assistant Corporation Counsel in charge of its Division of Ordinance Enforcement.

17. Defendant, Maurice W. Lee, is a citizen of the State of Illinois and Magistrate of the Circuit Court of Cook County, Illinois. He is sued individually and in his capacity as Magistrate of the Circuit Court of Cook County and as representative of the class of Magistrates of the Circuit Court of Cook County, Illinois.

18. Defendant, John J. Limperis, is a citizen of the State of Illinois and Magistrate of the Circuit Court of Cook County, Illinois. He is sued individually and in his capacity as Magistrate of the Circuit Court of Cook County and as representative of the class of Magistrates of the Circuit Court of Cook County, Illinois.

19. Defendants, John T. Burke, Joseph Ratkvich and Robert Kulovitz are citizens of the State of Illinois and officers of the Police Department of the City of Chicago, Illinois. They are sued individually and in their capacity as officers of the Police Department of the City of Chicago and as representative of the class of police officers of the City of Chicago.

20. The Defendants herein, under color of certain statutes of the State of Illinois and certain ordinances of the City of Chicago, have purposely entered into a plan or scheme of concerted and joint action with and among themselves and with other persons, some of whom are unknown

to Plaintiffs, to subject or cause to be subjected the Plaintiffs, citizens of the United States, to the deprivation of rights, privileges and immunities secured to them by the constitution and laws of the United States.

21. The Defendants, or some of them, have met together, on more than one occasion; they have discussed, formulated, outlined and agreed to a detailed plan and scheme of harassment, arrests, detention, setting of exorbitant and excessive bail, prosecutions, trials, conviction, fines and imprisonment, which detailed plan and program they have agreed to direct against the Plaintiffs herein, and other citizens of the United States, members of the same class as these Plaintiffs similarly situated, solely for the purpose of deterring, hindering, preventing and depriving these Plaintiffs of rights, privileges and immunities secured to them by the constitution and laws of the United States, and more particularly of the First Amendment privileges of speech and assembly. The Defendants, acting together and separately have committed specific acts in furtherance of, and to carry out the above described plan and scheme, as more particularly set forth below:

(a) Defendants, James Conlisk, and Richard J. Elrod, as a result of the above described meetings among Defendants, and formulation of the above described plan and scheme, have been designated by their superiors namely Defendants Richard J. Daley, and Raymond F. Simon, respectfully to be the principal persons to implement and carry out the aforesaid plan to deterrence, hindrance, and prevention of the exercise of Plaintiffs' First Amendment privileges of speech and assembly, by designating the occasions, places, manner and method of arrests, as well as the number of Plaintiffs to be arrested; and by actual designation of particular places of detention of particular Plaintiffs as distinguished from other persons arrested in the City of Chicago, Illinois.

(b) Defendants Maurice W. Lee, and John J. Limperis, acting with the other Defendants named herein and by and through the authority of their superiors, have willfully and unlawfully acted in furtherance of the aforesaid detailed plan and scheme by the willful and unconstitutional application and imposition of unreasonable and exorbitant bail after Plaintiffs or some of them had been arrested; for the sole purpose of effecting Plaintiffs' unlawful detention; thereby depriving Plaintiffs, or some of them of their liberty and property, without due process of law.

(c) Defendants Richard J. Elrod, and the Defendant John J. Stamos, acting through his subordinates, as State's Attorney of Cook County, have threatened, and actually attempted to set in motion unlawful prosecutions of the Plaintiffs or some of them through the application to these Plaintiffs of the aforesaid statutes of the State of Illinois and ordinances of the City of Chicago, all of which are unconstitutional on their face and/or unconstitutional in their application to the Plaintiffs herein in furtherance of the above described detailed plan; said plan being calculated to deprive the Plaintiffs herein of their privileges, immunities and rights secured to them under the Constitution of the United States.

III. Jurisdiction of the Court.

22. The jurisdiction of the Court over the complaint arises under Title 28 U. S. C., Sections 1331, 1332, 1343(3) and (4), 2201, 2202, 2281 and 2284; Title 42 U. S. C., Sections 1981, 1983 and 1985, and the Constitution of the United States and more particularly, the First, Fourth, Fifth, Sixth, Eighth, Tenth, Thirteenth, Fourteenth and Fifteenth Amendments thereto.

23. The amount in controversy, exclusive of interest and costs, exceeds the sum or value of Ten Thousand Dollars ($10,000).

24. The Defendants herein, under color of certain statutes of the State of Illinois and certain ordinances of the City of Chicago have purposefully entered into a plan or scheme of concerted and joint action with and among themselves and with other persons some of whom are unknown to Plaintiffs, to subject or cause to be subjected the Plaintiffs, citizens of the United States, to the deprivation of rights, privileges and immunities secured to them by the Constitution and laws of the United States.

25. Pursuant to this plan or scheme the Defendants have attempted to threaten and to continue to attempt to prosecute the Plaintiffs and all persons associated with them or working in cooperation therewith under color and authority of certain statutes, namely, Ch. 38, Secs. 25 (a), (1), (2), Ch. 38, Sec. 31-1; Ch. 38-12-2; 12-4; 12-6; and certain ordinances of the City of Chicago, to-wit: Ch. 193-1 and Ch. 11-33. Said statutes and ordinances are set forth in an Appendix, marked Exhibit "A", and incorporated by reference herein.

26. Further, Defendants, or some of them, without any basis whatsoever in fact, and solely for the purpose of depriving Plaintiffs of their Federally protected rights attempted to institute the prosecution of the Plaintiffs and those associated with them or working in cooperation therewith by arresting certain of the Plaintiffs without any warrants of any kind, without probable cause. That upon so illegally and unconstitutionally arresting Plaintiffs, Defendants then charged Plaintiffs, or some of them, with violations of the aforesaid statutes, ordinances, or some of them.

27. Specifically, on or about the 1st day of August, 1967, Plaintiffs, Rommell Muller, Joseph H. Reynolds and David A. Reynolds, members of Sub-Class One, all being citizens of the United States of America, and residents of the City of Chicago, Illinois, and other citizens of the United States

and residents of the City of Chicago, Illinois, did gather and lawfully and peaceably assemble in and upon the public streets of the City of Chicago, Illinois, and more specifically in and upon the sidewalks and public thoroughfares commonly known as 67th Street and Cottage Grove Avenue, Chicago, Illinois, to investigate and peacefully protest against the unlawful shooting and killing of one Julius Woods, a Negro citizen and resident of same community by a white person, not a resident of said community. The Plaintiffs, and other members of the class, all residents of the City of Chicago, concerned with the shooting of Julius Woods, attempted to ascertain the facts surrounding his shooting and to exercise their First Amendment rights of free speech, assembly, and the right to petition for redress of grievances. These Plaintiffs individually, and other members of the same class while performing the above acts, were arrested pursuant to the aforesaid statutes and ordinances, or some of them, and all held on unreasonable, excessive and exorbitant bail, ranging from Ten Thousand Dollars ($10,000.) to Fifty Thousand Dollars ($50,000.).

28. On or about the 14th day of September, 1967, Plaintiffs Jerome Parker and Rudy Hooper, and other persons being Negro residents of the City of Chicago, Illinois, and citizens of the United States, did lawfully gather and peacefully assemble in and upon the public streets of the City of Chicago, and more particularly the sidewalk and public thoroughfares commonly known as 43rd Street and Langley Avenue, Chicago, Illinois, for the purpose of peacefully and lawfully demonstrating and protesting against the unlawful attack and brutal beating of an 18 year old Negro young woman who resided in said community, by police officers of the City of Chicago, which assault and brutal beating of the said 18 year old Negro young woman resulted in her hospitalization, and occurred on or about September 12, 1967. Said Plaintiffs, in so peacefully protesting and

demonstrating, were attempting to exercise their First Amendment rights of free speech, assembly and the right to petition for redress and grievances. These Plaintiffs individually, and other members of the same class, while performing the above acts, were arrested pursuant to the aforesaid statutes and ordinances, or some of them, and all held on unreasonable, excessive and exorbitant bail, ranging from Ten Thousand Dollars ($10,000) to Fifty Thousand Dollars ($50,000).

29. On or about May 21, 1967, Plaintiff James Washington, a Negro resident of the City of Chicago, Illinois, and a citizen of the United States, and other Negro residents and citizens of the United States, similarly situated, did lawfully gather and peacefully assemble in and upon the public streets of the City of Chicago and more particularly the sidewalks and public thoroughfares commonly known as 51st Street and South Park Avenue, Chicago, Illinois; and within and upon the grounds of the public park located within the City of Chicago and commonly known as Washington Park; and plaintiff and said persons were so doing for the lawful purpose or urging that the said public park, or portion thereof be renamed in order that said park would be rendered more relevant in location and character to the predominant number of Negro residents who reside in the vicinity of said park, and in recognition of a member or members of their own ethnic group similar to the kind of recognition accorded other national and ethnic groups in other parts of the City of Chicago. In so doing Plaintiff and others were in the exercise of their First Amendment rights of free speech, assembly, and while performing the above acts, were arrested pursuant to the abovesaid statutes and ordinances, or some of them, and all held on unreasonable, excessive and exorbitant bail.

30. On or about August 23, 1967, Plaintiffs Arnold Ford, Vissa Marie Turner, Wysingo Turner, Andrew Brown,

Charles Fletcher, James Jones, and Herman Townsend, all being members of Sub-Class Four, and Negro residents of the City of Chicago, Illinois, and citizens of the United States, and other Negro residents and citizens of the United States; similarly situated, did lawfully gather and peacefully assemble in and upon the public streets of the City of Chicago, and more particularly the sidewalks and public thoroughfares commonly known as 111th Street and Throop Avenue, Chicago, Illinois, to inquire, investigate and peacefully protest against the unlawful shooting of another Negro youth and resident of said community. The Plaintiffs and other members of the Class, concerned with the said shooting of another youth, and while so peacefully protesting and demonstrating against said shooting, were attempting to exercise their First Amendment rights of free speech, assembly and the right to petition for redress of grievances. The Plaintiffs individually, and other members of the same class while performing the above acts, were arrested pursuant to the aforesaid statutes and ordinances, or some of them and all held on unreasonable, excessive and exorbitant bail.

31. On or about August 4, 1967, Plaintiff, Frank Ditto, a Negro resident of the City of Chicago, Illinois, and a citizen of the United States, and other Negro residents and citizens of the United States similarly situated, did lawfully gather and peacefully assemble in and upon a certain playground located in the City of Chicago, Illinois, at 3501 S. Wallace Street, Chicago, Illinois, and said Plaintiffs were lawfully and peacefully in and upon the premises of said public playground, for the lawful purpose of peacefully demonstrating and protesting against the lack and absence of adequate playground facilities in the south side community, in the City of Chicago where they, and their children, all being Negroes, resided. In so doing, plaintiff, Frank Ditto, and other persons similarly situated

were attempting to exercise their First Amendent rights of free speech, assembly and while performing the above described lawful acts, were arrested by the Defendants, or some of them, and charged with violations of the above said statutes and ordinances, or some of them, and held on unreasonable, excessive and exorbitant bail.

32. That the arrests of Plaintiffs, or some of them, and threats or attempts to enforce the aforesaid mob violence and disorderly conduct statutes against Plaintiffs, are not made by the Defendants with any expectation of securing valid convictions but rather are a part of a plan, conceived and implemented by Defendants to employ arrests, seizures of plaintiffs' persons, and their unlawful detention on unreasonable, excessive and exorbitant bail and threats of prosecution under color of the aforesaid statutes to harass Plaintiffs and discourage them and their supporters from asserting and attempting to vindicate the Constitutional rights, particularly of Negro citizens; and the particular tactic in the said plan or scheme, to-wit: the unlawful use of the Illinois Bail Statute, does result in the effective unlawful detention of these Plaintiffs, particularly the Negro residents of the City of Chicago named herein, and accordingly effectively deprives these Plaintiffs of their liberty and property without due process of law and deprives them of rights secured to them under the First, Eighth, and Fourteenth Amendments to the Constitution of the United States.

33. The provisions of Illinois Revised Statutes, Ch. 38, Sections 25-1(a), (1) (2) (3); Ch. 38, Sec. 31-1; Ch. 38, Sec. 12-2; 12-4 and 12-6, and the said ordinances of the City of Chicago, Ch. 193-1 and Ch. 11-33 (Exhibit "A"), are void and illegal on their face and as applied to the Plaintiffs herein, in that, they violate the Constitution of the United States and in particular the First, Fourth, Fifth, Sixth, Ninth, Tenth, Thirteenth, Fourteenth and Fifteenth

Amendments thereto. These statutes and ordinances violate the fundamental guarantees of free speech, press, assembly, and the right to petition the government for redress of grievances. They violate the guarantee of due process by law in that they are vague and indefinite and fail to meet the requirements of certainty in criminal statutes. Statutes and ordinances, or some of them, such as are complained of herein, and in particular, Ill. Rev. Stats., Ch. 38, Sections 25-1 (a), (1)(2) and Chicago Ordinance Ch. 193-1, have been held unconstitutional on their face by other Federal courts, including the Supreme Court of the United States.

34. Pursuant to the aforesaid plan or scheme Defendants have threatened and continue to threaten to enforce the said unconstitutional, void, and illegal states and ordinances against the Plaintiffs herein for the sole purpose of harassing, intimidating, subjecting and causing to be subjected Plaintiffs and their members, friends and supporters to the deprivation of rights, privileges, and immunities secured to them by the Constitution and laws of the United States and, in particular, those guaranteed by the First Amendent.

35. The vast majority of Negro citizens of the City of Chicago, Illinois, and their supporters and friends are law-abiding persons who nevertheless have serious complaints against the administration of justice and the administration of the laws, as herein complained of, their economic deprivation, and the inadequacy of numerous public services relating to schools, housing, and other grievances. The impact of the unconstitutional prosecutions complained of herein, is designed to and has the effect of deterring the Negro community in particular, and their friends and supporters from engaging in an area of activity which is constitutionally protected, because they are fearful of becoming the victims of the unconstitutional

and discriminatory law and law enforcement and prosecutive program hereinabove described conducted by the Defendants; and therefore Defendants' conduct has the effect of creating a chill upon the exercise of their rights protected under the First and Fourteenth Amendments of the Constitution of the United States.

36. The prosecution of any Plaintiffs herein will have destructive, harassing and intimidating and chilling effects upon Federal rights described above and in particular those guaranteed by the First Amendment not only of the Plaintiffs who would in fact be prosecuted, but upon the rights of every member of the classes who are parties hereto and represented by Plaintiffs.

37. The same chilling effects on First Amendment rights will result from trials of Plaintiffs even though they may be ultimately acquitted. Every day that the said charges remain pending against Plaintiffs, irreparable injury is being done the Plaintiffs in that:

(a) Plaintiffs are deterred by fear of possible initial conviction of these charges, or of the filing of additional charges, from vigorously pursuing their lawful activities as described above.

(b) Plaintiffs who were not charged with violations of the above-described statutes and ordinances are deterred by fear of possible initial convictions on these charges, or of the filing of additional charges, from vigorously pursuing their First Amendment rights to speak out against racial injustice.

(c) Numerous persons, members of the various subclasses of Plaintiffs named herein, and friends and supporters of the Plaintiffs have been arrested, as were some of the Plaintiffs, and arising out of the same circumstances herein alleged, and because of their impoverished circumstances were unable to make the exorbitant and unlawful

bail. Accordingly, to achieve their liberty and to obtain relief from unlawful detention, they were required to accede to offers, submitted by the Defendants to plead guilty to the charges or face probable conviction and further detention.

(d) Certain Plaintiffs who were able to make excessive bail, were thereby deprived of funds and property without due process of law.

(e) Certain plaintiffs, not being able to make exorbitant and unlawful bail were thereby deprived of the right to adequate and competent counsel; the right to secure the presence of witnesses for their trials and the opportunity to prepare an adequate defense.

(f) Members of this class who were not charged with any violations of statutes or ordinances are deterred by fear of possible charges being placed against them for seeking to peacefully exercise their said First Amendment rights.

38. Accordingly, unless this Court restrains the operation and enforcement of these void, invalid, and unconstitutional state statutes, laws and city ordinances, plaintiffs, and members, friends and supporters will continue to suffer the most serious, immediate and irreparable injury in that they will continue to be deterred, intimidated, hindered and prevented from exercising their most elementary and fundamental federal constitutional rights.

39. Plaintiffs have no adequate remedy at law.

Wherefore, plaintiffs pray for the following relief:

1. That pursuant to Title 28 U. S. C., 2281 and 2284, a three-judge Federal District Court be immediately convened to hear and determine this proceeding.

2. That a permanent injunction issued without bond; and that bond be expressly waived.

(a) restraining the defendants, their agents and attorneys from the enforcement, operation or execution of any of the statutes of the State of Illinois, and ordinances of the City of Chicago complained of herein.

(b) restraining the defendants, their agents, and attorneys from impeding, intimidating, hindering, and preventing plaintiffs or members, friends and supporters of ACT from exercising the rights, privileges and immunities guaranteed to them by the Constitution and laws of the United States;

(c) restraining the defendants, their agents, and attorneys from setting unreasonable and exorbitant bail.

3. That a declaratory judgment issue declaring that Ill. Rev. Stats., Ch. 38, sec. 25-1(a)(1)(2) and (3); Ch. 38, sec. 31-1; Ch. 38, sec. 12-2; 12-4 and 12-6; and Ch. 193-1 and Ch. 11-33 of the ordinances of the City of Chicago, are void on their face, null and void as violative of the Constitution of the United States, and/or as applied to the conduct of the plaintiffs herein.

4. That, pending the hearing and determination of the prayers for permanent relief, an interlocutory injunction issue restraining the defendants, their agents, attorneys and all others acting in concert with them from enforcing in any way the provisions of the statutes and ordinances set forth in 3 above; or from instituting or undertaking any proceedings whatsoever pursuant to said statutes and ordinances against the plaintiffs, their members, friends and supporters, herein.

5. For any and all other relief which this Court may see fit to grant. Plaintiffs respectfully pray that the above relief be granted.

Robert L. Tucker
30 North La Salle Street
Chicago, Illinois 60602
236-8624

R. Eugene Pincham
12 West Garfield Boulevard
Chicago, Illinois 60609
DR 3-3600

Kermit Coleman
72 East 47th Street
Chicago, Illinois 60650

Jean F. Williams
366 East 47th Street
Chicago, Illinois 60650
BO 8-6450

Ellis E. Reid
123 West Madison Street
Chicago, Illinois 60602
FR 2-1106

Lawrence E. Kennon
6 East Garfield Boulevard
Chicago, Illinois 60615
Ke 8-5975

Leonard Karlin
173 West Madison Street
Chicago, Illinois 60602
AN 3-4735

Norman E. Lapping
33 North LaSalle Street
Chicago, Illinois 60602
RA 6-7733

Irving Birnbaum
11 South LaSalle Street
Chicago, Illinois 60602
DE 2-0551

Leo E. Holt
166 West Washington Street
Chicago, Illinois 60602
AN 3-6054

Cecil C. Butler
116 South Michigan Avenue
Chicago, Illinois 60603
726-0157

Edward Thompson
116 South Michigan Avenue
Chicago, Illinois 60603
726-0157

Dennis J. Roberts
116 Market Street
Newark, New Jersey 07102
201-622-1467

William M. Kunstler and
Arthur Kinoy
511 Fifth Avenue
New York, New York 10017
212-MU 2-8317

EXHIBIT A.

Appendix.

Statutes and Ordinances Challenged Herein.

Ill. Rev. Stats., Ch. 38, § 25-1. Mob Action.

(a) Mob action consists of any of the following:

(1) The use of force or violence disturbing the public peace by 2 or more persons acting together and without authority of law; or

(2) The assembly of 2 or more persons to do an unlawful act; or

(3) The assembly of 2 or more persons, without authority of law, for the purpose of doing violence to the person or property of any one supposed to have been guilty of a violation of the law, or for the purpose of exercising correctional powers or regulative powers over any person by violence.

(b) Any person engaged in mob action shall be fined not to exceed $500 or imprisoned in a penal institution other than the penitentiary not to exceed 30 days, or both.

(c) Any participant in a mob action which shall by violence inflict injury to the person or property of another shall be fined not to exceed $1,000 or imprisoned in a penal institution other than the penitentiary not to exceed one year, or in the penitentiary from one to 5 years, or both fined and imprisoned.

(d) Any participant in a mob action who does not withdraw on being commanded to do so by any peace officers shall be fined not to exceed $500 or imprisoned in a penal institution other than the penitentiary not to exceed one year, or both.

Ill. Rev. Stats., Ch. 38, § 31-1. Resisting or Obstructing a Peace Officer.

A person who knowingly resists or obstructs the performance by one known to the person to be a peace officer of any authorized act within his official capacity shall be fined not to exceed $500 or imprisoned in a penal institution other than the penitentiary not to exceed one year, or both.

Ill. Rev. Stats., Ch. 38, § 12-4(a)(5). Aggravated Battery

(a) A person who, in committing a battery, intentionally or knowingly causes great bodily harm, or permanent disability or disfigurement commits aggravated battery and shall be imprisoned in a penal institution other than the penitentiary not to exceed one year or in the penitentiary from one to 10 years.

(5) Knows the individual harmed to be a peace officer, or a person summoned and directed by him, while such officer is engaged in the execution of any of his official duties including arrest or attempted arrest; commits aggravated battery and shall be imprisoned in a penal institution other than the penitentiary not to exceed one year or in the penitentiary from one to 5 years.

Ill Rev. Stats., Ch. 38, § 12-6(a)(6). Intimidation

(a) A person commits intimidation when, with intent to cause another to perform or to omit the performance of any act, he communicates to another a threat to perform without lawful authority any of the following acts:

(6) Take action as a public official against anyone or anything, or withhold official action, or cause such action or witholding; or

Caption 193.

Public Peace and Welfare

General regulations

193- 1. Disorderly conduct
193- 1.1. Inciting riots, etc.
193- 1.2. Drinking in public ways
193- 1.3. Defacing and injuring house of worship and cemeteries
193- 2. Disorderly houses
193- 3. Vagrancy
193 4. Disturbing places of worship
193- 5. Damage to public property
193- 6. Injuring or obstructing signal systems
193- 6.1 Use of sirens
193- 7. False fire alarms
193- 7.1. Passing police lines
193- 7.2. Press cards
193- 7.3. Application
193- 7.4. Advisory committee
193- 7.5. Form of press card
193- 7.6. City seal
193- 7.7. Revocation
193- 7.8. Penalty
193- 7.9. Smoking in stores and elevators
193- 7.10. Smoking in public conveyances
193- 8. Bonfires
193- 9. Masking in public
193-10. Possessing burglar's tools
193-11. Hatpin with point exposed
193-12. Throwing objects on athletic fields
193-13. Objects on sills or railings
193-14. Spikes in railings and fences
193-15. Clay holes and excavations
193-16. Carrying or exhibiting flags
193-17. Rag picking
193-18. Trespassing on property
193-19. Trespassing on elevated track
193-20. Advertising and signs on buildings

193-21. Removing sod or earth
193-22. Spiritualism and fortune telling
193-23. Forging signatures
193-24. Deceptive advertising
193-25. Advertising psychic or magical powers
193-26. Bagatelle and pigeonhole
193-27. Charitable entertainments
193-28. Promotion of marriage

Firearms and other weapons

193-29. Discharging firearms
193-30. Carrying dangerous weapons
193-31. Discharging toy firearms
193-32. Hunting

Official time

193-33. Designation
193-34. Change of city clocks

Violation of chapter provisions

193-35. Penalty

Disorderly conduct

193.1. All persons who shall make, aid, countenance, or assist in making any improper noise, riot, disturbance, breach of the peace, or diversion tending to a breach of the peace, within the limits of the city; all persons who shall collect in bodies or crowds for unlawful purposes, or for any purpose, to the annoyance or disturbance of other persons; all persons who are idle or dissolute and go about begging; all persons who use or exercise any juggling or other unlawful games or plays; all persons who are found in houses of ill-fame or gaming houses, all persons lodging in or found at any time in sheds, barns, stables, or unoccupied buildings, or lodging in the open air and not giving a good account of themselves; all persons who shall wilfully assault another in the city, or be engaged in, aid, or abet in any fight, quarrel, or other disturbance in the city; all persons who stand, loiter, or stroll about in any place in the city, waiting or seeking to obtain money or other valuable things from others by trick or fraud, or to aid or assist therein; all persons that shall engage in any

fraudulent scheme, device, or trick to obtain money or other valuable thing in any pluace in the city, or who shall aid, abet or in any manner be concerned therein; all touts, ropers, steerers, or cappers, so called, for any gambling room or house who shall ply or attempt to ply their calling on any public way in the city, all persons found loitering about any hotel, block, barroom, dramshop, gambling house, or disorderly house, or wandering about the streets either by night or day without any known lawful means of support, or without being able to give a satisfactory account of themselves; all persons who shall have or carry any pistol, knife, dirk, knuckles, slingshot, or other dangerous weapon concealed on or about their persons; and all persons who are known to be narcotic addicts, thieves, burglars, pickpockets, robbers or confidence men, either by their own confession or otherwise, or by having been convicted of larceny, burglary, or other crime against the laws of the state, who are found loungign in, prowling or loitering around any steamboat landing, railroad depot, banking institution, place of public amusement, auction room, hotel, store, shop, public way, public conveyance, public gathering, public assembly, court room, public building, private dwelling house, house of ill-fame, gambling house, or any public place, and who are unable to give a reasonable excuse for being so found, shall be deemed guilty of disorderly conduct, and upon conviction thereof, shall be severally fined not less than one dollar nor more than two hundred dollars for each offense. [Amend. Coun. J. 5-24-51. p. 312.]

Inciting riots, etc.

193-1.1. It is unlawful to create a clear and present danger of a riot or assault, battery, or other unlawful trespass against any person or group of persons because of his or their race, religion, color, national origin, or ancestry, or to create a clear and present danger of arson, vandalism, defacement, or other unlawful trespass against property because of the race, religion, color, national origin, or ancestry of the owner, possessor, or authorized user or users of said property, or, in the case of a cemetery, of the decedent buried therein.

The term "person" as used in this section shall include one or more individuals, co-partnerships, corporations, firms, organizations, associations, leagues, or other bodies.

Any person violating the provisions of this section shall be fined not less than twenty-five dollars nor more than two hundred dollars or imprisonment for not less than ten days or more than six months, or both, for each offense. [Added Coun. J. 9-10-47, p. 881.]

Drinking in public

193-1.2. (a) It shall be unlawful for any person to drink any alcoholic liquor as defined by law on any public way or in or about any motor vehicle upon a public way in the city.

(b) It shall be unlawful for any person to transport, carry, possess or have any alcoholic liquor in or upon or about any motor vehicle upon any public way in the city except in the original package and with the seal unbroken.

(c) Any person violating any provision of this section shall be fined not less than fifty dollars nor more than two hundred dollars, or shall be punished by imprisonment for a period of six months, or by both such fine and imprisonment. [Passed. Coun. J. 12-10-53, p. 6226; amend 11-28-56, p. 3563.]

Defacing and injuring house of worship and cemeteries.

193-1.3. Any person who wilfully defaces, mars, injures, destroys or removes any vault, tomb, monument, gravestone, memorial of the dead, church, synagogue, or any other structure constituting a place of worship of any religion, sect or group, or any part of any contents thereof, or any fence, tree, shrub or plant appurtenant thereto, shall be fined not less than twenty-five dollars nor more than two hundred dollars, or imprisoned for not more than six months, or both such fine and imprisonment, for each offense. Each such act of marring, injuring, destroying or removal shall constitute a separate offense. [Passed. Coun. J. 1-20-60, p. 2048.]

Disorderly houses.

193-2. Every common, ill-governed, or disorderly house, room, or other premises kept from the encouragement of idleness, gaming, drinking, fornication, or other misbehavior, is hereby declared to be a public nuisance, and the keeper and all persons connected with the maintenance thereof, and all persons patronizing or frequenting the same, shall be fined not exceeding two hundred dollars for each offense.

Vagrancy.

193-3. All persons who are idle and dissolute, or who go about begging; all persons who use any shell game, sleight-of-hand or juggling trick, or other unlawful game to cheat, defraud, or unlawfully obtain money or other valuable thing; pilferers; confidence men; common drunkards; common night walkers; persons lewed, wanton, or lascivious in speech or behavior; common brawlers; persons who are habitually neglectful of their employment or their calling, and do not lawfully provide for themselves or for the support of their families; and all persons who are idle or dissolute and who neglect all lawful business, and who habitually misspend their time by freqenting houses of ill-fame or gaming houses; all persons lodging in or found in the night time in sheds, barns, or unoccupied buildings or lodging in the open air, and not giving a good account of themselves; and all persons who are known to be thieves, burglars, or pickpockets, either by their own confession or otherwise, or by having been convicted of larceny, burglary, or other crime against the laws of the state punishable by imprisonment in the state prison or in a house of correction of any city, and having no lawful means of support, are habitually found prowling around any steamboat landing, railroad depot, banking institution, broker's office, place of public amusement, auction room, store, shop, or crowded public way, public conveyance, or at any public gathering or assembly, or lounging about any court room, private dwelling houses, or are found in any house of ill-fame or gambling house, are hereby declared to be vagabonds, and shall be fined not to exceed one hundred dollars for each offense. [Amend. Coun. J. 12-21-39, p. 1396.]

Disturbing places of worship.

193-4. Any person who shall disquiet or disturb any congregation or assembly met for religious worship by making a noise, or by rude and indecent behavior or profane discourse within the place of worship, or so near to the same as to disturb the order and solemnity of the meeting, shall be fined not exceeding fifty dollars for each offense.

IN THE UNITED STATES DISTRICT COURT.

MOTION TO STRIKE AND DISMISS, AND IN OPPOSITION TO THE ENTERING OF A TEMPORARY INJUNCTION AND THE CONVENING OF A THREE JUDGE COURT.

Now come certain defendants, John S. Boyle, Chief Judge of the Circuit Court of Cook County, Illinois; John J. Stamos, State's Attorney of Cook County, Illinois; Joseph I. Woods, Sheriff of Cook County; Maurice W. Lee, Magistrate, Circuit Court of Cook County, Illinois; and John J. Limperis, Magistrate, Circuit Court of Cook County, Illinois; by their attorney John J. Stamos, State's Attorney of Cook County, Illinois, and respectfully moves this Court to Strike and dismiss the above entitled cause and to deny plaintiff's Motion For a Temporary Injunction and the Convening of a Three Judge Court for the following reasons:

1. This Court has no jurisdiction over the matters presented.

2. As to those plaintiffs who are involved in pending criminal proceedings in the courts of the State of Illinois, this Court is barred from entering an injunction against the defendants by Title 28, Sec. 2283, U. S. Code. Such provision is applicable to stay State Court proceedings only when (a) an act of Congress so determines; (b) In aid of the federal court's jurisdiction, or (c) when a federal court judgment or decree is to be protected, none of which exceptions are here applicable.

3. As to those plaintiffs not involved in pending criminal cases in the State of Illinois, the allegations of the complaint do not state a claim upon which relief can be granted in this Court.

4. As regards all plaintiffs in the above entitled cause, no claim is presented upon which relief can be granted in this Court.

5. That the complaint states insufficient allegations under Tit. 42, Secs. 1981, 1983 and 1985 to grant relief to plaintiffs.

6. The doctrine of abstention is applicable and should be utilized in this proceeding to allow the State courts of Illinois maximum responsibility in the areas particularly within their competence.

7. The provisions of Tit. 42, Sec. 1985 have not been sufficiently pleaded by plaintiff to allege the necessary prerequisites of a conspiracy to deny plaintiffs' equal protection under the laws.

8. The allegations of plaintiff's complaint do not sufficiently show or justify irreparable injury, should this Court abstain and allow the State courts of Illinois to fully determine the issues set forth in said complaint.

9. The defendants contend that plaintiffs have an adequate remedy at law. Specifically, the claim raised herein can be asserted in the State Court proceeding now pending and the Courts of the State of Illinois under the Supremacy Clause of the federal constitution are duly bound to adjudicate those alleged constitutional assertions.

10. Insofar as the application of the challenged criminal statutes of the State of Illinois, as well as the criminal statute of any state, may impinge upon the First Amendment Rights of any plaintiff already arrested as well as those not presently subjected to criminal proceedings, these are matters which constitute a defense to a criminal action and properly should be brought in the state court proceeding unless this Court is prepared to conduct actual trials in each instance on the state issues.

11. With reference to those purported claims raised

by plaintiffs involving the 4th, 5th, 6th, 8th, 9th, 10th, 13th and 15th Amendments to the United States Constitution plaintiff makes no specific allegation of facts as to the applicability of these Amendments to their purported claim or fails to demonstrate the manner in which said Amendments apply to allegedly void the particular statutes on their face.

12. As regards plaintiffs' claim that these statutes in question are unconstitutional on its face in that they purportedly violate plaintiffs' due process of law, relating to vagueness and indefiniteness, defendants state that these statutes in question are valid regulations and precise, narrowly drawn regulatory statutes which prescribe certain specific behavior and prohibit a particular type of conduct; as to plaintiffs' claim that such statutes on due process grounds, are unconstitutional as they are applied, this claim is premature in that the State Courts of Illinois, in which certain of these matters are pending, have not yet ruled as to the precise applicability of these statutes as to plaintiffs. As to those plaintiffs without matters pending in the State Court, there are no facts alleged showing a threatened state application of these statutes to those plaintiffs.

13. As regards plaintiffs' claim that the statutes in question are unconstitutional on its face in that they purportedly violate plaintiffs' First Amendment rights, defendants state that the statutes in question are valid regulations and precise, narrowly drawn regulatory statutes which prescribe certain specific behavior and prohibit a particular type of conduct; as to plaintiffs' claim that such statutes, on first amendment grounds, are unconstitutional as they are applied, this claim is premature in that the State Courts of Illinois in which certain of these matters are pending, have not ruled as to precise applicability of these statutes as to plaintiffs who have pending proceed-

ings; as to those plaintiffs without matters pending in the State Court, there are no facts alleged showing a threatened state application of these statutes to those plaintiffs.

JOHN J. STAMOS,
State's Attorney of Cook County, Illinois,
Attorney for certain defendants.

By: EDWARD J. HLADIS,
Chief of Civil Division.
RONALD BUTLER,
DEAN H. BILTON,
Assistant State's Attorneys.

STATE OF ILLINOIS,
COUNTY OF COOK. ss.

Ronald Butler, Assistant State's Attorney of Cook County, Illinois, counsel for certain defendants herein, being first duly sworn on oath deposes and says that he has read the Motion To Dismiss the foregoing case subscribed by him; that the same is not interposed for delay, and in his opinion, is well founded in point of law.

RONALD BUTLER.

Subscribed and Sworn to before me this 9th day of November, A. D. 1967.

(SEAL)

MARION BOYD,
Notary Public.

UNITED STATES DISTRICT COURT.

Northern District of Illinois,

Eastern Division.

[Title Omitted.]

OPINION.

This is a class action, brought by the plaintiffs pursuant to Rule 23(a)(1)(3) of the Federal Rules of Civil Procedure on their own behalf and on behalf of all others similarly situated, seeking declaratory and injunctive relief. Some of the individual plaintiffs are negro citizens who currently face criminal prosecution before the Circuit Court of Cook County, Illinois. These prosecutions arose out of a series of demonstrations taking place in Chicago, Illinois. Plaintiff, ACT, is an unincorporated association, maintaining offices in Chicago, Illinois, among the purposes of which is to secure negro citizens their federal rights and to end all forms of racial segregation and discrimination. To obtain these objectives, it engages in a variety of protest activities, including picketing, demonstrations, rallies, mass meetings, voter registration drives, community organization and publication. Plaintiffs, Lawrence Landry, Robert Lucas, Robert Brown and Michael Rogers are negroes and sue as representatives of the class of all negroes in the City of Chicago. Defendants are either officers of the City of Chicago, Illinois, or officers of the State of Illinois.

It is asserted that the jurisdiction of the Court over the Complaint arises under Title 28 U. S. C., Sections 1331, 1332, 1343(3), (4), 2201, 2202, 2281 and 2284; Title 42

U. S. C., Sections 1981, 1983 and 1985; and the Constitution of the United States, particularly, the First, Fourth, Fifth, Sixth, Eighth, Tenth, Thirteenth, Fourteenth and Fifteenth Amendments thereto.

The complaint alleges that the defendants have purposefully entered into a plan or scheme of concerted and joint action among themselves and with other persons unknown to the plaintiffs to deprive the plaintiffs of rights, privileges and immunities secured to them by the Constitution and laws of the United States. Pursuant to this plan, the defendants have allegedly prosecuted and threatened to prosecute the plaintiffs and other members of the class they represent under color and authority of certain statutes of the state of Illinois and certain ordinances of the City of Chicago. It is alleged that certain plaintiffs and those they represent have been arrested without any warrants of any kind or probable cause while peacefully demonstrating, that prosecutions based on these statutes and ordinances have been instituted against these plaintiffs, and that they have been held on unreasonable and exorbitant bail. The complaint asserts that these arrests and prosecutions, as well as threats of future enforcement of the statutes and ordinances, have not been made by defendants with any expectation of securing valid convictions, but rather are part of a plan to employ arrest, detention on excessive bail and threats of prosecution to harass plaintiffs and their supporters and discourage them from asserting and exercising their federal rights.

The complaint also alleges that the state statutes and city ordinances under which this plan or scheme has been effectuated are unconstitutional on their face.[1] It is con-

1. The state statutes in question are: Ill. Rev. Stat., Ch. 38, § 25-1 (Proscribing "Mob Violence"); Ill. Rev. Stat., Ch. 38, § 31-1 (Proscribing "Resisting or Obstructing a Peace Officer"); Ill. Rev. Stat., Ch. 38, § 12-2 (Proscribing "Aggravated Assault"); Ill. Rev. Stat., Ch. 38, § 12-4(a)(5) (Proscribing "Aggravated

tended that these statutes and ordinances are vague and indefinite; they permit a construction which would violate plaintiffs' First Amendment guarantees as well as due process of law.

It is asserted that the impact of the plan allegedly conceived and implemented by the defendants and the possibility of prosecution under these statutes and ordinances is to discourage and inhibit the lawful exercise by the plaintiffs and the class which they represent of freedom of expression, freedom of assembly, and the right to petition government for redress of grievances.

On the basis of these allegations, the plaintiffs seek: (1) the issuance of declaratory judgments declaring that the state statutes and city ordinances in question are void on their face, null and void as violative of the Constitution of the United States, and/or as applied to the conduct of the plaintiffs herein, (2) the issuance of a permanent injunction restraining the defendants, their agents, and attorneys from the enforcement, operation, or execution of any of these statutes and ordinances, and (3) the issuance of a permanent injunction restraining the defendants, their agents, and attorneys from impeding, intimidating, hindering, and preventing plaintiffs, or members and supporters of ACT from exercising the rights, privileges, and immunities guaranteed to them by the Constitution and laws of the United States. The plaintiffs also move that a three-judge court be convened pursuant to Section 2281 and 2284, Title 28, of the United States Code to hear and determine the issues presented herein. Pending a hearing and determination by a three-judge court, plaintiffs seek the issuance of

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Battery"); Ill. Rev. Stat., Ch. 38, § 12-6(a)(6) (Proscribing "Intimidation").

The city ordinances in question are: Municipal Code of Chicago, Ch. 11, § 33 (Proscribing "Obstructing or Resisting a Police Officer"); Municipal Code of Chicago, Ch. 193, § 1 (Proscribing "Disorderly Conduct").

a temporary injunction restraining the defendants, their agents, attorneys and all others acting in concert with them from enforcing in any way the provisions of the statutes and ordinances in question or from instituting or undertaking any proceedings whatsoever pursuant to these statutes and odinances.[2]

Pursuant to Rule 12 of the Federal Rules of Civil Procedure, both the state and city defendants have moved to dismiss this action. Defendants present omnibus motions. They assert, inter alia, the following grounds: (1) this Court has no jurisdiction over the matters presented; (2) the complaint states insufficient allegations to grant relief to plaintiffs; (3) the complaint fails to state a claim upon which relief can be granted; (4) the complaint does not disclose irreparable injury or harm of such a nature as to justify equitable relief; (5) the plaintiffs have an adequate remedy at law since their constitutional claims may be asserted in the proceedings now pending in the state courts; (6) the doctrine of federal abstention is applicable and should be utilized in this proceeding to allow the state courts of Illinois an opportunity to adjudicate the areas within their particular competence; (7) this Court is barred by Title 28, United States Code, Section 2283, from entering an injunction against the defendants in regard to those criminal proceedings currently pending in the Illinois state courts, and (8) the complaint makes no specific factual allegations as to the applicability of the Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, Thirteenth and Fifteenth Amendments and fails to demonstrate the manner in which these amendments apply so as to void the statutes and ordinances in question.

2. Pending further action by this court or a three-judge court, the defendants have informally agreed, and the plaintiffs have accepted this agreement, that all pending prosecutions for acts of plaintiffs prior to the filing of this suit will be held in status quo.

THE SCOPE OF THE PRESENT INQUIRY.

The plaintiffs seek to have a three-judge court convened pursuant to Sections 2281 and 2284, Title 28, of the United States Code to determine the constitutional questions raised in the complaint. Section 2281 provides as follows:

> An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute . . . shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges under § 2284 of this Title.

The purpose of this section is to provide procedural protection against the improvident invalidation of state legislation by a single federal judge.[3] It assures the collective judgment of three federal judges whenever a plaintiff seeks to enjoin a state regulatory scheme upon constitutional grounds. Concomitant to this collective judgment is the provision of a direct appeal to the Supreme Court.[4] Accordingly, whenever an application for such relief is addressed to a district court, a single judge's inquiry is limited to whether it is appropriate to convene a three-judge court.

The rule established by the early cases dealing with the powers of a single judge when such injunctive relief was sought was that a single judge could not dismiss such an action on the merits.[5] This doctrine was qualified, how-

3. *Moody* v. *Flowers*, 387 U. S. 97, 100 (1967); *Bartlett & Co.* v. *State Corp. Commission of Kansas*, 223 F. Supp. 975, 978 (Kan. 1963); *Voege* v. *American Sumatra Tobacco Corp.*, 192 F. Supp. 689, 691 (Del. 1961).

4. *See* 28 U. S. C. § 1253.

5. *See ex parte Northern Pacific R. R. Co.*, 280 U. S. 142 (1929); *Ex parte Metropolitan Water Co. of West Virginia*, 220 U. S. 539 (1911); Wright, Federal Courts § 50, at 165 (1963).

ever, by the Supreme Court in the case of *Ex parte Poresky*, 290 U. S. 30 (1934), where it was held that a single judge could dismiss the action for want of jurisdiction and that such jurisdiction was lacking if the federal constitutional claim was insubstantial.[6] Although it was recognized in *Poresky* that a single judge could examine the substance of a constitutional question before the convening of a three-judge court, the earlier rule has continued to have its influence. Title 28, United States Code, Section 2284(5), currently provides that a single judge "shall not . . . dismiss the action or enter a summary or final judgment." This language was added to the three-judge court act in 1942[7] and would seem to suggest a codification of the earlier rule.[8] Nevertheless, decisions subsequent to this amendment to the act indicate that while a single judge's authority is circumscribed, it is not so limited as this language would seem to suggest.[9]

The most recent Supreme Court decision involving this question is *Idlewild Bon Voyage Liquor Corp.* v. *Epstein*, 370 U. S. 713 (1961). In *Idlewild* the Court indicated

6. Noted in 47 Harv. L. Rev. 707; 28 Ill. L. Rev. 839 (1934); 18 Minn. L. Rev. 729. A constitutional claim was deemed insubstantial if it was obviously without merit or if its unsoundness was demonstrated by previous decisions of the Supreme Court. *California Water Service Co.* v. *City of Redding*, 304 U. S. 252, 255 (1939).

7. Act of April 6, 1942, c. 210, 56 Stat. 199.

8. Wright, Federal Courts § 51, at 165-66 (1963); Note, 28 Minn. L. Rev. 131 (1944); Note, 62 Harv. L. Rev. 1398 (1949).

9. *See, e.g., Eastern States Petroleum Corp.* v. *Rogers*, 265 F. 2d 593 (D. C. Cir.), *mandamus denied*, 361 U. S. 805 (1959); *Carrigan* v. *Sunland-Tujunga Tel. Co.*, 263 F. 2d 568 (9th Cir. 1959); *Klein* v. *Lee*, 254 F. 2d 188 (7th Cir. 1958). Although these courts seem to have applied the rule announced in *Ex parte Poresky*, 290 U. S. 30 (1934), without thoroughly considering the effect of 28 U. S. C. § 2284(5), this course seems to have been approved by the Supreme Court. See *Turner* v. *City of Memphis*, 369 U. S. 350, 352-53 (1962); *Bailey* v. *Peterson*, 369 U. S. 31 (1962). *See also*, Wright, Federal Courts § 51, at 166 (1963).

that a single judge's inquiry "is appropriately limited to whether the constitutional question raised is substantial, whether the complaint at least formally alleges a basis for equitable relief, and whether the case presented otherwise comes within the requirements of the three-judge statute." *Id.* at 715. If those criteria are met, it is "impermissible for a single judge to decide the merits of the case, either by granting or by withholding relief." *Id.* at 715. This would seem to represent the present limits of a single judge's power when an application for a three-judge court is addressed to a district court. See *Stamler* v. *Willis*, 371 F. 2d 413, 414 (7th Cir. 1966); *Pierre* v. *Jordon*, 333 F. 2d 951, 957 (10th Cir.), *cert. denied*, 379 U. S. 974 (1954), *rehearing denied* 380 U. S. 927 (1965).

It seems clear, therefore, that at the present time this Court does not have the power to dismiss the instant action unless it fails to meet the criteria specified in *Idlewild* or the general requisites of federal jurisdiction.[10]

THE REQUISITES OF FEDERAL JURISDICTION.

The plaintiffs seek to invoke the jurisdiction of this Court under a number of jurisdictional statutes. Among them are sections 1331 and 1343 of Title 28, United States Code, Sec. 1331 provides that federal courts shall have general original jurisdiction over cases "arising under" the constitution, laws and treaties of the United States, while section 1343 provides that the federal courts shall have original jurisdiction over cases seeking relief for certain specified wrongs.

The plaintiffs' claims are based on the construction and effect of various federal laws and certain Amendments

10. It is clear that a single judge, where a three-judge court is requested, may consider whether the cause comes within the requisite of federal jurisdiction in an appropriate case. See *Lion Mfg. Corp.* v. *Kennedy*, 330 F. 2d 833 (D. C. Cir. 1964).

to the Constitution of the United States. This would seem to satisfy any common sense approach to the meaning of the phrase "arising under" in section 1331. See *Gully* v. *First National Bank in Meridian*, 299 U. S. 109 (1936). Moreover, the plaintiffs seek redress for wrongs specified in section 1343. Therefore, the jurisdictional requisites for purposes of both sections 1331 and 1343 are satisfied.

SUBSTANTIAL FEDERAL QUESTION.

Even though an injunction is requested on the basis of the unconstitutionality of a state statute, a district judge need not convene a three-judge district court if the constitutional question presented in the complaint is wholly insubstantial.[11] This lack of substantiality might appear either because the constitutional question is obviously without merit or because its unsoundness is so clearly demonstrated by previous decisions of the Supreme Court as to foreclose the subject.[12]

As previously stated, the complaint alleges that certain state statutes and city ordinances are unconstitutional on their face.[13] Although the defendants have cited decisions by the Supreme Court of Illinois upholding the constitutionality of some of the challenged statutes and ordinances, these decisions alone would not foreclose an examination of the constitutionality of these statutes and ordinances.

11. *E.g.*, *Ex parte Poresky*, 290 U. S. 30 (1934); *Powell* v. *Workman's Compensation Bd. of State of New York*, 327 F. 2d 131, 138 (2d Cir. 1964); *Benoit* v. *Gardner*, 241 F. Supp. 206, 207 (Mass. 1965); *United States ex rel. Horne* v. *Pennsylvania Bd. of Parole*, 234 F. Supp. 368, 370 (E. D. Pa. 1964).

12. *E.g.*, *California Water Service Co.* v. *City of Redding*, 304 U. S. 252, 255 (1938); *German* v. *South Carolina State Ports Authority*, 295 F. 2d 491, 494 (4th Cir. 1961); *Ford* v. *Attorney General of Pennsylvania*, 184 F. Supp. 129 (E. D. Pa.), *affirmed*, 364 U. S. 291 (1960).

13. See notes 1 and 2, *supra*, and accompanying text.

Moreover, the complaint also alleges that the statutes and ordinances in question have been unconstitutionally applied to the plaintiffs as part of a plan or scheme to deprive them of their constitutional rights. When viewed in this context, it is difficult to see how the constitutional questions raised can be deemed insubstantial.

Basis for Equitable Relief.

A three-judge court is to be invoked under section 2281 only where the complaint seeks injunctive relief. Before a federal court will assume equitable jurisdiction, however, the groundwork for such relief must be established. The plaintiff must show that there is an absence of a plain and adequate remedy at law and that the enforcement of the statute will cause him irreparable harm and injury. The defendants contend that these requisites do not exist in the instant actions. They assert that plaintiffs are afforded an adequate remedy at law through the adjudication of their claims in the state courts and that the mere possibility of an erroneous application of constitutional standards by those courts does not amount to irreparable injury.

Although in the landmark case of *Ex parte Young*, 209 U. S. 123 (1908), the Supreme Court recognized that federal injunctions would be justified where state officers "threaten and are about to commence proceedings either of a civil or criminal nature, to enforce against parties affected an unconstitutional act, violating the Federal Constitution,"[14] the general requisites for equitable relief have usually been rigorously required by the federal courts in such situations. The application of these limitations has usually been compelled by considerations of federalism. It has been generally assumed that state courts and prose-

14. 209 U. S. at 156.

cutors will observe constitutional limitations and exercise their power in good faith. Accordingly, federal interference with the enforcement of state laws has been deemed inconsistent with our federal framework. The normal adjudication of constitutional defenses has been considered to afford parties an adequate remedy at law, and the mere possibility of an erroneous initial application of constitutional standards has not usually been considered to amount to the irreparable injury necessary to justify invocation of equitable relief.[15]

The application of these traditional limitations was qualified by the Supreme Court in *Dombrowski* v. *Pfister*, 380 U. S. 479 (1965). The complaint involved in *Dombrowski* sought declaratory relief and an injunction restraining the defendants (state officials) from enforcement of certain allegedly unconstitutional Louisiana anti-subversive statutes. It asserted two distinct grounds for federal relief. First, it alleged that the defendants had invoked, and threatened to continue to invoke, criminal process upon the statutes without any hope of ultimate success, but solely to discourage the plaintiffs' civil rights activities. Second, it alleged that the Louisiana statutes were unconstitutionally broad and vague regulations of expression. A three-judge court dismissed the complaint, reasoning that the case did not present a question of threatened irreparable injury to federal rights and that constitutional defenses could be adequately presented in the normal state adjudicatory process.[16]

On appeal, the Supreme Court reversed, stating,

> [t]he allegations in this complaint depict a situation

15. *See, e.g., Cleary* v. *Bolger*, 371 U. S. 392 (1963); *Douglas* v. *City of Jeannett*, 319 U. S. 157, 161-65 (1943); *Beal* v. *Missouri Pacific R. R. Corp.*, 312 U. S. 45, 49-51 (1941); *Spielman Motor Sales Co.* v. *Dodge*, 295 U. S. 89, 95-97 (1935).

16. *Dombrowski* v. *Pfister*, 227 F. Supp. 556, 562-63 (E. D. La. 1964).

in which defense of the State's criminal prosecution will not assure adequate vindication of constitutional rights. They suggest that a substantial loss or impairment of freedoms of expression will occur if appellants must await the state court's disposition and ultimate review in this Court of any adverse determination. These allegations, if true, clearly show irreparable injury. 380 U. S. at 485-86.

The complaint in the instant action is substantially similar to the one in *Dombrowski*. It alleges two bases for relief: (1) a planned misuse of statutes and ordinances regulating expression by the defendants, and (2) the statutes themselves are unconstitutionally vague and indefinite regulations of expression. The *Dombrowski* case seems to indicate that either of these grounds will support equitable relief.[17]

The complaint, obviously, alleges a formal basis for equitable relief. Thus, it would seem appropriate to convene a three-judge court to determine the constitutionality of the challenged state statutes.

The defendants also contend that this court is barred by section 2283 of Title 28, United States Code, from enjoining any prosecutions against plaintiffs under the statutes and ordinances attacked in this action which are currently pending in the state courts of Illinois.[18]

This question is premature. Section 2283 is not a jurisdictional statute. It is essentially a rule of comity and its

17. *See* 380 U. S. at 485-87. See, also, *Carmichael* v. *Allen*, 267 F. Supp. 985 (N. D. Ga. 1967); *Cameron* v. *Johnson*, 262 F. Supp. 873, 878 (S. D. Miss. 1966).

18. Section 2283 provides:

> A Court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

demand is directed to the discretion of the federal court.[19] The scope of the present inquiry is limited to whether it is appropriate to convene a three-judge court. This question, therefore, should be reserved for later determination if it becomes relevant.

OTHERWISE APPROPRIATE FOR A THREE-JUDGE COURT.

Section 2281, Title 28, United States Code, provides for a three-judge court when the enforcement of a "state-statute" is sought to be enjoined. The Supreme Court has consistently construed this section to encompass only statutes of general and statewide application.[20] The term "statute" does not include city ordinances, local resolutions, or state statutes having only a local application. Similarly, the officer sought to be enjoined must be a state officer. A three-judge court need not be convened where the action seeks to enjoin a local official who is performing acts of purely local concern.[21]. It has been held, however, that section 2281 does apply to local officers performing a state function which embodies a policy of statewide concern.[22]

The instant action poses constitutional challenges to both state statute and local ordinances, and seeks to enjoin both

19. *E.g., Baines* v. *City of Danville*, 337 F. 2d 579, 593 (4th Cir. 1964); *Petroleum Corp.* v. *Harper*, 273 F. 2d 715, 718-19 (5th Cir. 1960); *Cameron* v. *Johnson*, 262 F. Supp. 873, 886-87 (S. D. Miss. 1966); *Feldman* v. *Pennroad Corp.*, 60 F. Supp. 716 (Del. 1945), *aff'd.* 155 F. 2d 733 (3d Cir. 1946), *cert. denied* 329 U. S. 808 (1947).

20. *See, e.g., Moody* v. *Flowers*, 387 U. S. 97 (1966); *Griffin* v. *School Board*, 377 U. S. 218, 227-28 (1963); *Rorick* v. *Board of Commissioners*, 307 U. S. 208 (1939); *Ex parte Collins*, 277 U. S. 565 (1928).

21. *See, e.g., Moody* v. *Flowers*, 387 U. S. 97, 101 (1966); *Rorick* v. *Board of Commissioners*, 307 U. S. 208 (1939); *Ex parte Collins*, 277 U. S. 565, 568 (1928).

22. *Spielman Motor Sales Co.* v. *Dodge*, 295 U. S. 89 (1935); *Briggs* v. *Elliott*, 98 F. Supp. 529 (S. C. 1951).

state and local officials. The respective challenges to these state statutes and city ordinances present common questions of fact as to whether they are part and parcel of a scheme to deprive the plaintiffs of their federal rights. While a joinder of these claims is permissible under the federal rules of civil procedure,[23] their joinder is inappropriate for purposes of a three-judge court. The state statutes have a state wide applicability. The city ordinances have only a localized applicability. The attack upon the state statutes and the issuance of an injunction against state and local officials charged with their enforcement present issues within the ambit of a three-judge court. The attacks upon the city ordinances and the issuance of an injunction against those charged with their enforcement, present issues which may be properly tried by only a single judge.

The Supreme Court has consistently maintained the view that if a state statute is attacked on substantial federal constitutional grounds and on other grounds as well, a three-judge court is required and has jurisdiction over all the claims raised against the statute.[24] In contrast, however, where a party joins a claim which is appropriate for a three-judge court with an independent claim properly triable before a single judge, the Supreme Court has held that the three-judge court lacks jurisdiction over the independent claim.[25]

This Court concludes, therefore, that the claims regarding the constitutionality of the challenged state statutes

23. See F. R. Civ. Pro. 18(a), 20(a).

24. *Florida Lime & Avocado Growers, Inc.* v. *Jacobsen*, 362 U. S. 73 (1960); *Parker* v. *Brown*, 317 U. S. 341 (1943); *Sterling* v. *Constantin*, 287 U. S. 378, 393 (1932); *Louisville & Nashville R. R. Co.* v. *Garrett*, 231 U. S. 298 (1913).

25. *Powell* v. *United States*, 300 U. S. 276, 289-90 (1932); *New York Central Securities Corp.* v. *United States*, 287 U. S. 12 (1932); *Pittsburgh & West Virginia Ry. Co.* v. *United States*, 281 U. S. 479, 488 (1930).

should be severed from those involving the municipal ordinances. A three-judge court should be convened to consider the former claims, while the latter shall be tried separately by a single judge.

ABSTENTION.

The defendants assert that federal abstention is applicable to the instant proceeding and should be utilized to allow the state courts an opportunity to adjudicate the areas within their particular competence.

It is true that the doctrine of federal abstention has been been applied in situations which are analogous to this.[26] The application of this doctrine has been based on deference to the interest and sovereignty of the states and on the reluctance of the federal courts to adjudicate constitutional questions prematurely when state courts might adopt a statutory construction which would avoid or modify the constitutional issues.[27] Recent authorities, however, indicate the doctrine may not be applicable in situations such as is depicted in instant complaint.[28]

Nevertheless, it is unnecessary to decide this question at the present time. The doctrine of abstention does not go to the jurisdiction of the court; it is essentially a matter of discretion. This question is beyond the scope of the present inquiry, i. e., the appropriateness of a three-judge proceeding to consider the constitutionality of the challenged state statutes and, therefore, the question of abstention is premature.

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26. *See, e.g., Cleary* v. *Bolger*, 371 U. S. 392 (1962); *Pugach* v. *Dollinger*, 365 U. S. 458 (1960), *affirming* 277 F. 2d 739 (5th Cir.); *Douglas* v. *City of Jeannett*, 319 U. S. 157 (1942).

27. See cases note 26 *supra*.

28. See *Dombrowski* v. *Pfister*, 380 U. S. 479 (1965); *Zwickler* v. *Koota*, 36 L. W. 4041 (1967); *Carmichael* v. *Allen*, 267 U. S. 985 (1967).

For the foregoing reasons, defendants' motions to dismiss are denied. A three-judge court will be convened to consider the constitutionality of the challenged state statutes. The issue of the alleged unconstitutional application of the state statutes by the defendants to the plaintiffs will be held in abeyance pending a determination of the threshold question of constitutionality. Similarly, the question of the constitutionality of the challenged ordinances will be considered initially by the Court and the issue of the alleged unconstitutional application thereof to plaintiffs held in abeyance. Appropriate orders will be entered.

Hubert L. Will,
United States District Judge.

Dated: December 28, 1967.

IN THE UNITED STATES DISTRICT COURT.

(Title Omitted.)

ANSWER.

The defendants, John S. Boyle, Chief Judge of the Circuit Court of Cook County, Illinois; John J. Stamos, State's Attorney of Cook County, Illinois; Joseph I. Woods, Sheriff of Cook County, Illinois; Maurice W. Lee, Magistrate of the Circuit Court of Cook County, Illinois, and John J. Limperis, Magistrate of the Circuit Court of Cook County, Illinois, by John J. Stamos, State's Attorney of Cook County, Illinois, respectfully allege:

1. They admit the allegations of Paragraph 1.

2. They admit the allegations of Paragraph 2 insofar as they are applicable to these defendants and further aver that the criminal prosecutions for the violation of the Illinois Statutes in question were initiated at least two months prior to the commencement of this action and are still pending in the Criminal Division of the Circuit Court of Cook County, Illinois.

3. They admit the allegations of Paragraph 3 insofar as they are applicable to these defendants and further aver that the criminal prosecutions for the violation of the Illinois Statutes in question were initiated at least two months prior to the commencement of this action and are still pending in the Criminal Division of the Circuit Court of Cook County, Illinois.

4. They admit the allegations of Paragraph 4 insofar as they are applicable to these defendants and further aver that the criminal prosecutions for the violation of

the Illinois Statutes in question were initiated at least two months prior to the commencement of this action and are still pending in the Criminal Division of the Circuit Court of Cook County, Illinois.

5. They admit the allegations of Paragraph 5 insofar as they are applicable to these defendants and further aver that the criminal prosecutions for the violation of the Illinois Statutes in question were initiated at least two months prior to the commencement of this action and are still pending in the Criminal Division of the Circuit Court of Cook County, Illinois. Defendants further aver that the subclass of plaintiffs in Paragraph 5 of the Complaint prosecuted a petition for removal from the State Court to the U. S. District Court for the Northern District of Illinois on September 11, 1967, the cause entitled *Brown, et al.* v. *People of the State of Illinois and City of Chicago*, 67 C. 1557.

6. They admit the allegations of Paragraph 6 of the Complaint insofar as they apply to these defendants except insofar as the date of arrest. Plaintiff, Frank Ditto, was arrested on August 4, 1966. Defendants further aver that the criminal prosecutions for the violation of the Illinois Statutes in question were initiated in August 1966 and are still pending in the Criminal Division of the Circuit Court of Cook County, Illinois.

7. They neither admit nor deny the allegations of Paragraph 7 and demand strict proof thereof.

8. They deny the allegations of Paragraph 8.

9. They deny the allegations of Paragraph 9.

10. They admit the allegations of Paragraph 10.

11. They admit the allegations of Paragraph 11.

12. They admit the allegations of Paragraph 12 except that they deny that said defendant is a representative of

the class of Judges of the Circuit Court of Cook County, Illinois.

13. They admit the allegations of Praagraph 13.

14. They admit the allegations of Paragraph 14.

15. They admit the allegations of Paragraph 15.

16. They admit the allegations of Paragraph 16.

17. They admit the allegations of Paragraph 17 except that they deny that said defendant is a representative of the class of Magistrates of the Circuit Court of Cook County, Illinois.

18. They admit the allegations of Paragraph 18 except that they deny that said defendant is a representative of the class of Magistrates of the Circuit Court of Cook County, Illinois.

19. They admit the allegations of Paragraph 19 except that they deny that said defendants are representatives of the class of Police Officers of the City of Chicago.

20. They deny the allegations of Paragraph 20.

21. They deny the allegations of Paragraph 21 and all sub-parts thereof.

22. They deny the allegations of Paragraph 22 in that a substantial federal question has not been presented.

23. They deny the allegations of Paragraph 23.

24. They deny the allegations of Paragraph 24.

25. They deny the allegations of Paragraph 25.

26. They deny the allegations of Paragraph 26.

27. They deny the allegations of Paragraph 27.

28. They deny the allegations of Paragraph 28.

29. They deny the allegations of Paragraph 29.

30. They deny the allegations of Paragraph 30.

31. They deny the allegations of Paragraph 31.
32. They deny the allegations of Paragraph 32.
33. They deny the allegations of Paragraph 33.
34. They deny the allegations of Paragraph 34.
35. They deny the allegations of Paragraph 35.
36. They deny the allegations of Paragraph 36.
37. They deny the allegations of Paragraph 37.
38. They deny the allegations of Paragraph 38.
39. They deny the allegations of Paragraph 39.

AFFIRMATIVE DEFENSES.

1. This Court lacks jurisdiction of the subject matter.

2. The Complaint fails to state a claim upon which relief can be granted.

3. Insofar as the Complaint seeks to enjoin the pending prosecutions in the Criminal Division of the Circuit Court of Cook County, Illinois, such requested relief is expressly prohibited by the provisions of 28 U. S. C. 2283.

4. Insofar as the plaintiff seeking injunctive relief against the pending criminal prosecutions in the Criminal Division of the Circuit Court of Cook County, Illinois, they have an adequate remedy at law. Under Illinois law and procedure these same claims can be asserted in the criminal proceedings commenced before the filing of this suit and now pending in the Criminal Division of the Circuit Court of Cook County, Illinois.

5. The doctrine of federal abstention should be applied to preclude the discretionary exercise of the jurisdiction of this Court should such jurisdiction be found by this Court to exist.

WHEREFORE, the defendants respectfully pray that this Complaint be dismissed.

JOHN J. STAMOS,
Statees Attorney of Cook County, Illinois,

By EDWARD J. HLADIS,
Chief of Civil Dicision.
RONALD BUTLER,
Assistant State's Attorney.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

Ronald Butler hereby certifies that he served a copy of this Answer upon Robert L. Tucker, Esq., by mailing a copy of same, first class mail, postage prepaid to him at his office, 30 North La Salle Street, Chicago, Illinois 60602.

RONALD BUTLER.

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1968

Supreme Court, U.S.
FILED
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JOHN F. DAVIS, CLERK

No. 64

JOHN S. BOYLE, Chief Judge of the Circuit Court of Cook County, Illinois; JOHN J. STAMOS, State's Attorney of Cook County, Illinois; MAURICE W. LEE and JOHN S. LIMPERIS, Magistrates of the Circuit Court of Cook County, Illinois; and JOSEPH I. WOODS, Sheriff of Cook County, Illinois,

Appellants,

vs.

LAWRENCE LANDRY, ROMMELL MULLER, JOSEPH H. REYNOLDS, DAVID A. REYNOLDS, JAMES WASHINGTON, FRANK DITTO, ROBERT LUCAS, ROBERT BROWN, MICHAEL ROGERS, BERNARD HUGHES, ARNOLD FORD, VISSA MARIE TURNER, WYSINGO TURNER, ANDREW BROWN, CHARLES FLETCHER, JAMES JONES, HERMAN TOWNSEND, JEROME PARKER, RUDY HOOPER and ACT, an unincorporated association,

Appellees.

On Appeal From the United States District Court for the Northern District of Illinois, Eastern Division.

MOTION TO AFFIRM UNDER RULE 16 OF THE RULES OF THE SUPREME COURT OF THE UNITED STATES

Robert L. Tucker
30 North LaSalle Street
Suite 800
Chicago, Illinois 60602
(321) 236-8624
Attorney for Appellees

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1968

NO. 244

JOHN S. BOYLE, Chief Judge of the Circuit Court of Cook County, Illinois; JOHN J. STAMOS, State's Attorney of Cook County, Illinois; MAURICE W. LEE and JOHN S. LIMPERIS, Magistrates of the Circuit Court of Cook County, Illinois; JOSEPH I. WOODS, Sheriff of Cook County, Illinois,

Appellants,

vs.

LAWRENCE LANDRY, ROMMELL MULLER, JOSEPH H. REYNOLDS, DAVID A. REYNOLDS, JAMES WASHINGTON, FRANK DITTO, ROBERT LUCAS, ROBERT BROWN, MICHAEL ROGERS, BERNARD HUGHES, ARNOLD FORD, VISSA MARIE TURNER, WYSINGO TURNER, ANDREW BROWN, CHARLES FLETCHER, JAMES JONES, HERMAN TOWNSEND, JEROME PARKER, RUDY HOOPER and ACT, an unincorporated association,

Appellees.

On Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

MOTION TO AFFIRM UNDER RULE 16 OF THE RULES OF THE SUPREME COURT OF THE UNITED STATES.

Now come LAWRENCE LANDRY, ROMMELL MULLER, JOSEPH H. REYNOLDS, DAVID A. REYNOLDS, JAMES WASHINGTON, FRANK DITTO, ROBERT LUCAS, ROBERT BROWN, MICHAEL ROGERS, BERNARD HUGHES ARNOLD FORD, VISSA MARIE TURNER, WYSINGO TURNER, ANDREW BROWN, CHARLES FLETCHER, JAMES JONES, HERMAN TOWNSEND, JEROME PARKER, RUDY HOOPER and ACT, an unincorporated association, Appellees, pursuant to the provisions of Rule 16 of the Rules of the Supreme Court of the United States and respectfully move this Court to enter an order affirming that portion of the Judgment of the United States District Court for the Northern District of Illinois, Eastern Division, which declared Illinois Revised Statutes, Chapter 38, Section 12-6 (a) (3), unconstitutional and void.

The Three Judge District Court below made a thorough analysis of the leading cases in this Court which have involved direct limitations on speech, and gave clear and complete recognition to this Court's frequently pronounced principle that free speech is not an unlimited, unqualified right, but that societal value of speech must, on occasion, be subordinated to other values and considerations. Indeed,

the appellees herein have respectfully urged that the trial court below went too far in the application of the foregoing principle, resulting in its declaration of validity with respect to several other subsections of the Illinois Intimidation Statute. In this instance, the trial court asked itself, with respect to each subdivision of the Illinois Intimidation Statute, whether the gravity of the "evil," discounted by its improbability, justified this invasion of free speech by the State of Illinois. Dennis vs. United States, 341 U.S. 494, 507 -510 (1951). As regards Subsection (a) (3), which is the subject of this appeal, the trial court properly concluded that the alleged interests which the State of Illinois here purported to protect was too insubstantial to warrant restrictions of speech. Accordingly, the court below properly found Subsection (a) (3) to be overbroad. Martin vs. Struthers, 319 U.S. 141, 143-44 (1943); Schneider vs. State, 308 U.S. 147, 161 (1939).

It is respectfully submitted that this portion of the trial court's Judgment, limited to its construction of Subsection (a) (3) of the Illinois Intimidation Statute should be affirmed.

Respectfully submitted,

Robert L. Tucker
30 N. LaSalle Street, Suite 800
Chicago, Illinois 60602
236-8624

R. Eugene Pincham
840 E. 87th Street, Suite 201
Chicago, Illinois
994-2600

Kermit Coleman
6 South Clark Street
Chicago, Illinois
236-5564

Jean F. Williams
366 East 47th Street
Chicago, Illinois 60650
BO 8-6450

Ellis E. Reid
123 West Madison Street
Chicago, Illinois 60602
FR 2-1106

Lawrence E. Kennon
6 East Garfield Boulevard
Chicago, Illinois 60615
KE 8-5975

Leonard Karlin
173 West Madison Street
Chicago, Illinois 60602
AN 3-4735

Norman E. Lapping
33 North LaSalle Street
Chicago, Illinois 60602
RA 6-7733

Irving Birnbaum
11 South LaSalle Street
Chicago, Illinois 60602
DE 2-0551

Leo E. Holt
166 West Washington Street
Chicago, Illinois 60602
AN 3-6054

Cecil C. Butler
116 South Michigan Avenue
Chicago, Illinois 60603
726-0157

Edward Thompson
116 South Michigan Avenue
Chicago, Illinois 60603
727-0157

Dennis J. Roberts
116 Market Street
Newark, New Jersey 07102
201-622-1467

William M. Kunstler and
Arthur Kinoy
511 Fifth Avenue
New York, New York 10017
212 - MU 2-8317

Attorneys for Appellees.

PROOF OF SERVICE

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

Robert L. Tucker hereby certifies that he served a copy of the foregoing Motion to Affirm under Rule 16 of the Rules of the Supreme Court of the United States, by mailing a copy of same, first class mail, postage prepaid to:

John J. Stamos, Esq., State's Attorney of Cook County, Illinois, 500 Civic Center, Chicago, Illinois 60602

Raymond F. Simon, Esq., Corporation Counsel of the City of Chicago, 511 City Hall, Chicago, Illinois 60602

Robert Plotkin, Esq., Amicus Curiae, 208 South LaSalle Street, Suite 1270, Chicago, Illinois 60604

Robert L. Tucker

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968.

No. [redacted] 54

JOHN S. BOYLE, CHIEF JUDGE OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS; JOHN J. STAMOS, STATE'S ATTORNEY OF COOK COUNTY, ILLINOIS; JOSEPH I. WOODS, SHERIFF OF COOK COUNTY, ILLINOIS; MAURICE W. LEE AND JOHN S. LIMPERIS, MAGISTRATES OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS,

Appellants,

vs.

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Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

BRIEF FOR APPELLANTS.

EDWARD V. HANRAHAN,
State's Attorney of Cook County, Illinois.

DANIEL P. COMAN,
Chief of the Civil Division.

RONALD BUTLER,
Assistant State's Attorney,
500 Chicago Civic Center,
Chicago, Illinois 60602,
Attorney for Appellants.

DANIEL W. WEIL,
DEAN H. BILTON,
Assistant State's Attorneys,
Of Counsel.

THE SUNTHORP-WARREN PRINTING COMPANY, CHICAGO [redacted] 56

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968.

No. 244

JOHN S. BOYLE, CHIEF JUDGE OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS; JOHN J. STAMOS, STATE'S ATTORNEY OF COOK COUNTY, ILLINOIS; JOSEPH I. WOODS, SHERIFF OF COOK COUNTY, ILLINOIS; MAURICE W. LEE AND JOHN S. LIMPERIS, MAGISTRATES OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS,

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Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

BRIEF FOR APPELLANTS.

OPINIONS BELOW.

The Opinion of the Three Judge Court for the Northern District of Illinois, Eastern Division, is reported in 280 F. Supp. 938 (A. 55). On December 28, 1967, prior to the convening of the Three Judge Court, one of the District Judges overruled the Motion of these Appellants to dismiss the proceedings and his Opinion is reported in 280 F. Supp. 929 (A. 35).

JURISDICTION.

This suit was brought by the Appellees under 28 U. S. C., Sections 1331, 1332, 1343(3) and (4), 2201, 2202, 2281, 2284; 42 U. S. C., Sections 1981, 1983 and 1985; and the Constitution of the United States and, more particularly, the First, Fourth, Fifth, Sixth, Eighth, Tenth, Thirteenth, Fourteenth, and Fifteenth Amendments thereto. The suit was prosecuted to challenge the constitutional validity of numerous sections of the Illinois Criminal Code of 1961, as amended, namely: Chapter 38, Sections 25-1(a)(1)(2) and (3), which proscribe mob action; Chapter 38, Section 31-1, which relates to the offense of resisting arrest; Chapter 38, Sections 12-2, 12-4 and 12-6, which proscribe aggravated assault, aggravated battery and intimidation, respectively. The complaint also questioned the constitutional validity of these statutes as they were being applied to the plaintiffs. The Opinion and a Judgment Order of the Three Judge Court, which enjoin the defendants from the enforcement or the prosecution of Chapter 38, Sections 25-1(a)(2) and Chapter 38, Section 12-6(a)(3), Ill. Revised Statutes, 1967, were entered on March 1, 1968. A Decree for Permanent Injunction was entered on April 2, 1968. A Notice of Appeal which seeks to review that portion of the injunctive decree which enjoins the enforcement and prosecution of Chapter 38, Section 12-6(a)(3), was filed on behalf of the aforesaid Appellants on April 3, 1968, and the Appellees, on April 5, 1968, filed their notice of cross-appeal. By an order entered by the Honorable Justice Thurgood Marshall on June 6, 1968, the time to file the record and to docket the Appeal had been extended to and including July 1, 1968. Probable jurisdiction of the Appeal of Appellants was noted by this Court on December 9, 1968, while the cross-appeal of Appellees was dismissed on the same date for

failure to comply with Rule 13(1) of the Rules of the Supreme Court of the United States.

The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 28, United States Code, Sections 1253, 2281. The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *Dombrowski* v. *Pfister*, 380 U. S. 480; *Zwickler* v. *Koota*, 389 U. S. 241; *Cameron* v. *Johnson*, 390 U. S. 611.

STATUTES INVOLVED.

The provisions of the Statute involved in this Appeal are cited as Chapter 38, Section 12-6(a)(3) and are found at page 1544, Volume 1, Illinois Revised Statutes, 1967. This section reads as follows:[1]

"12-6. § 12-6. Intimidation). (a) *A person commits intimidation when, with intent to cause another to perform or to omit the performance of any act, he communicates to another a threat to perform without lawful authority any of the following acts:*

(1) Inflict physical harm on the person threatened or any other person or on property; or
(2) Subject any person to physical confinement or restraint; or
(3) *Commit any criminal offense;* or
(4) Accuse any person of an offense; or
(5) Expose any person to hatred, contempt or ridicule; or
(6) Take action as a public official against anyone or anything, or withhold official action, or cause such action or withholding; or
(7) Bring about or continue a strike, boycott, or other collective action.

(b) Penalty.
A person convicted of intimidation shall be fined not

1. For purposes of clarity the entire section has been set forth. Only the italicized portion is involved in this Appeal.

to exceed $5,000.00 or imprisoned in a penal institution other than the penitentiary not to exceed one year or in the penitentiary from one to five years, or both fined and imprisoned. As amended by act approved April 31, 1965. L. 1965, p. 387."

QUESTION PRESENTED.

Is a State criminal extortion statute, which prohibits one from communicating a threat to another to commit a criminal offense, unconstitutional as being overbroad, and, therefore, violative of the First Amendment to the Constitution of the United States?

STATEMENT OF THE CASE.

On October 26, 1967, the Appellees, composed of seven sub-classes, filed a complaint in the United States District Court for the Northern District of Illinois, Eastern Division, against numerous officials of the City of Chicago and County of Cook (A. 4-29). The complaint challenged the constitutionality of certain sections of the Illinois Criminal Code of 1961, as amended, requested the convening of a Three Judge Court pursuant to 28 U. S. C. 2281 and 2284, and prayed for a temporary and permanent injunction to restrain the defendants from the enforcement and prosecution of the enumerated Illinois Statutes (A. 18-20). Five sub-classes of Appellees to which reference is made in the complaint are composed of persons who were arrested under several of the challenged statutes prior to the institution of the suit in the Northern District of Illinois, Eastern Division, and whose prosecutions have been and are presently pending in the State courts of Illinois (A. 5-6). None of those persons, whose prosecutions are pending, has been arrested or charged with a violation of the Illinois Intimidation Statute (Chapter 38, Section 12-6,

Illinois Revised Statutes, 1967). The complaint alleged that the provisions of the Illinois Criminal Code of 1961, as amended, specifically, Chapter 38, Sections 25-1(a)(1)(2)(3) (Mob Violence); Chapter 38, Section 31-1 (Resisting Arrest); Chapter 38, Section 12-2 (Aggravated Assault); Chapter 38, Section 12-4 (Aggravated Battery); and Chapter 38, Section 12-6 (Intimidation), are void and illegal on their face and as applied to the Appellees (A. 16-17).

Certain of the enumerated defendants, Appellants herein, moved, on November 9, 1967, to strike and dismiss the complaint, to oppose the entry of a temporary injunction restraining the enforcement of the State criminal statutes challenged, and to oppose the convening of a Three Judge Court (A. 30-32).

A single trial judge, Will, J., in an opinion dated December 28, 1967, denied the motion of Appellants to dismiss the cause, ordered the convening of a Three Judge Court to consider the constitutionality of the challenged State statutes, and held in abeyance the issue of the alleged unconstitutional application of the State statutes by Appellants pending a determination of the threshhold question of constitutionality (A. 35-49). The Appellants agreed informally that all pending prosecutions of the named Appellees for acts prior to the filing of the instant complaint be held in *status quo;* accordingly, there was no ruling made with respect to Appellees' motion for temporary injunctive relief (A. 37, note 2).

The cause was set for hearing before a Three Judge Court on January 26, 1968, pursuant to the provisions of 28 U. S. C. 2281, 2284. Appellants filed an answer and affirmative defenses on January 19, 1968, which denied the material allegations of the complaint and affirmatively asserted, as regards the Appellees' request for injunctive relief, the grounds of lack of jurisdiction, failure to state

a claim upon which relief can be granted, and federal abstention as well as the prohibition embodied in 28 U. S. C. 2283, as reasons for denying such relief (A. 49-53).

On March 1, 1968, the panel of three judges issued an opinion declaring (1) the constitutional invalidity of certain subsections of the Illinois Criminal Code of 1961, as amended, namely, Chapter 38, Section 25-1(a)(2) and Chapter 38, Section 12-6(a)(3), Illinois Revised Statutes, 1967; (2) the constitutional validity of certain sub-sections of the Illinois Criminal Code of 1961, as amended, namely, Chapter 38, Sections 25-1(a)(1)(3), Chapter 38, Section 31-1, and Chapter 38, Sections 12-6(a)(1)(2)(4)(5)(6)(7)[2] (A. 55-102).

The decree of permanent injunction, entered April 2, 1968, perpetually enjoined the Appellants from the enforcement and the prosecution of Chapter 38, Section 12-6(a)(3), Illinois Revised Statutes, 1967 (A. 104). Notice of Appeal was filed by Appellants on April 3, 1968, together with a Stipulated Designation of Record.

2. Plaintiffs have abandoned their challenge to the constitutionality of the Illinois "Aggravated Assault" and "Aggravated Battery" Statutes, Chapter 38, Sections 12-2, and 12-4, Illinois Revised Statutes, 1967 (A. 58).

SUMMARY OF ARGUMENT.

An analysis of the decisions of this Court decided on issues involving freedom of expression clearly reflect that this Court has never sanctioned, as protected speech, utterances in a context of violence which become part of an instrument of force or utterances which encourage actual breach of law. The form and content of expression which constitutes an interference with the rights of other individuals can be said to convey no essential part of any exposition of ideas protected by the First Amendment. The effect of the decision of the lower court is to insulate, via the First Amendment, threatening acts which force other individuals to surrender their freedom of choice. The statute under consideration, when measured by the scope of the decisions of the Court, fails to transgress upon the sanctity of free expression of ideas, since the protection of rights of other individuals stands upon as equal footing as those similar freedoms to which a speaker is entitled.

Further, the complaint in this cause does not demonstrate the necessary prerequisites to sufficiently support equitable federal relief under the rationale of *Dombrowski* v. *Pfister*, 380 U. S. 480, since the determination of the constitutionality of a statute must be dependent upon sufficient factual allegations to support the extraordinary use of federal equity jurisdiction.

ARGUMENT.

I.

THE DETERMINATION BY THE THREE JUDGE COURT OF THE UNCONSTITUTIONALITY OF ILLINOIS REVISED STATUTE, 1967, CHAPTER 38, SECTION 12-6(a)(3), ON GROUNDS OF BEING OVERBROAD AND, THEREFORE, VIOLATIVE OF THE FIRST AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES, IS ERRONEOUS.

The holding of the Court below, with respect to its declaration of constitutional invalidity of Chapter 38, Section 12-6(a)(3), Illinois Revised Statute, 1967, is that, while the provision was not vague, and while the state may legitimately proscribe the making of threats to commit criminal offenses against persons or property, which conduct would constitute substantial evil, the statute is "overbroad since it prohibits threats of insubstantial evil" (A. 94). The Court further stated that "the commission of offenses against public order *only* (emphasis of the Court), however, is not such a substantial evil that the state may prohibit the threat of it" (A. 94). The Court expressly held that the language of Chapter 38, Section 12-6(a)(3) constituted an overbroad restriction on freedom of speech because the proscription of insubstantial evil is outweighed by the public interest in giving legitimate political discussion a wide berth (A. 94).

It is Appellant's position that (1) the Court erred in not abstaining from adjudicating the constitutionality of this statute; (2) the court erred in ruling that a threat to commit a criminal offense which is communicated to another with the intent to cause another to act or not to act is protected by the First Amendment; (3) the court erred in

interpreting "criminal offense" to mean any penal offense rather than those penal offenses defined by the Criminal Code; and (4) the court erred in judging this section of the Intimidation Statute on the basis of the substantiality of the crime threatened rather than on the basis of the effect of the threat on the person toward whom it is directed.

A. Plaintiffs Are Not Entitled to a Determination of Constitutionality of the Statute, Since They Have Pleaded No Specific Facts Which Depict Standing to Challenge the Intimidation Statute.

The Court determined that the complaint of the plaintiffs is sufficient to form a basis for equitable relief in the federal courts with regard to the Intimidation Statute (*Landry* v. *Daley*, 280 F. Supp. 929). It is Appellants' contention that, apart from what it considers an erroneous enlargement of the principles of the First Amendment in its application to a statute which prohibits extortion by threats without lawful authority to commit a criminal offense, the complaint in this cause does not demonstrate the necessary prerequisites to sufficiently support equitable federal relief under *Dombrowski* v. *Pfister*, 380 U. S. 480, or its progeny.

Plaintiffs' complaint, insofar as it challenges the validity of the statute here under consideration, alleges generally that the members of sub-class seven, all Negroes in the City of Chicago, are currently being "intimidated in the exercise of their First Amendment rights through the wholesale use of unconstitutional statutes to prosecute members of the Negro community and to threaten, intimidate, hinder and deter said First Amendment rights" (A. 7). Plaintiffs allege neither arrests under the Intimidation Statute nor specific facts tending to indicate threatened misuse of such statute to their detriment. Under such

circumstances, it is the contention of Appellants that the minimum requirements necessary to justify declaratory relief with respect to the Intimidation Statute is lacking.

In both *Dombrowski* v. *Pfister*, 380 U. S. 480, and *Zwickler* v. *Koota*, 389 U. S. 241, this Court was afforded an opportunity, based upon specific allegations of fact, to determine whether certain state statutes and initiated and threatened prosecution thereunder resulted in such an adverse effect upon free expression as to require declaratory relief by the federal courts. In neither case was the District Court requested to decide the constitutional question in a vacuum; in neither case was the pleading based upon nothing more than conclusory allegations that the purpose of the threatened enforcement of a statute was to harass and intimidate (*Cf. DuBois Clubs* v. *Clark*, 389 U. S. 309, 312, 313). Yet, without the benefit of a single specific fact upon which the enumerated statute or its possible threatened enforcement created a "chilling" effect on plaintiffs' First Amendment rights, the lower court proceeded to a determination of the constitutionality of the Intimidation Statute. Indeed, an examination of the complaint reveals the bare conclusory allegation that plaintiffs are intimidated by the Intimidation Statute—and that this "fact" coupled with allegations of vagueness and overbreadth of the statute constituted a sufficient foundation for declaratory relief in the federal court.

The effect of the action taken in this case is to enlarge the concept of expanded federal jurisdiction espoused in *Dombrowski* to a pleader's option, and to jettison the doctrine of abstention in First Amendment cases without requiring more explicit pleadings to determine whether the circumstances of the individual case warranted the Dombrowski approach (*Zwickler* v. *Koota*, 389 U. S. 241, 257—concurring opinion of Mr. Justice Harlan; *Cameron* v.

Johnson, 390 U. S. 611; *DuBois Clubs* v. *Clark*, 389 U. S. 309, 312, 313).

B. The First Amendment Does Not Protect Threats Communicated With the Intention to Force Another to Surrender His Freedom of Choice.

(1) History of the Illinois Extortion Statute.

In 1827, the first Illinois extortion statute was passed. It prohibited the obtaining of "money, goods, chattels or other valuable things" through the use of letters or writings that threatened the accusation of a crime or misdemeanor or the exposure of infirmaties or failings. It was also a type of assault and criminal libel statute in that it proscribed threats to kill or harm the person or property of another and threats to expose infirmaties even though these latter threats were not connected with the extortion element. A misdemeanor penalty of up to $500 fine and six months in jail were provided (Revised Laws of Illinois 1827, p. 145 §§ 106, 108; see also R. L. 1833, pp. 195, 196 §§ 109, 111; R. L. 1845, p. 170 §§ 109, 111).

In 1863, threats to prevent a man from working or a property owner from using his property were made criminal offenses (Illinois Laws 1863, p. 70 §§ 1, 2). Under these statutes, it was unlawful for one to seek to prevent another from working or enjoying the use of his land by "threat, intimidation or otherwise", or "threats, suggestions of danger or other means." A five hundred dollar fine or six month jail sentence was the prescribed penalty.

In 1874, the Illinois legislature recodified these three sections. The 1827 statute was not substantially changed (Illinois Revised Statutes, 1874, Chapter 38 § 93). The other two statutes were narrowed by modifying the intimidation by "other means" to "any unlawful means" or "unlawful interference." (Illinois Revised Statutes, 1874, Chapter 38

§§ 158, 159.) These statutes retained their misdemeanor punishment. The common law crime of extortion by public officials was also added (Illinois Revised Statutes 1874, Chapter 38 § 211).

In 1901, the felony of Extortion by Threats was added (Laws of Illinois 1901, p. 144 § 1). The Statute provided for a prison term up to twenty years for persons who intended to extort money, goods, chattels, or other valuable things by threats to kill, injure, kidnap or destroy property.

In 1921, extortions in connection with labor organizations were added to the Criminal Code (Law of Illinois 1921, p. 401 §§ 1-3, 5). Therefore, by 1959, the last session of the Illinois legislature prior to the adoption of the Illinois Criminal Code of 1961, Illinois had eight separate extortion sections of a general nature, excluding special intimidation sections such as compelling confessions or intimidating jurors, which latter sections are not within the statute under consideration by this Court (Illinois Revised Statutes, 1959, Chapter 38 §§ 240-243, 376-378; 456).

In 1961, Illinois obtained a completely revised Criminal Code. All of the above sections were combined in Chapter 38 § 12-6, Intimidation, which was made a misdemeanor (Illinois Revised Statutes, 1961, Chapter 38, Section 12-6). The Revision Committee commented as follows: "This section defines and prohibits as intimidation a wide range of acts previously proscribed in less identifiable form in Chapter 38 §§ 376-383 . . . Note that intimidation requires a specific intent to cause another to perform 'or to omit' the performance of any act (such as testifying), and the threat must be 'communicated' with that intent." (S. H. A. Chapter 38 § 12-6, Committee Comments.) This explanation focuses upon the protected subject of this legislation, *the exercise of an individual's freedom of choice and action*, which is the key element differentiating this statute from

statutes which merely protect public order. This type of protection was forecast by the Illinois Supreme Court in 1906 when in the case of *Franklin Union* v. *People*, 220 Ill. 355, 77 N. E. 176, it said (p. 379):

> "the citizens, when engaged in lawful pursuits, must be accorded the right to walk the public streets of our cities and on country highways in absolute security, and to go to and return from his home and place of business or employment without being interfered with. To follow him, to spy after him, to stop him and threaten him, to put him in fear, to intimidate him or to coerce him are, alike, unlawful. Intimidation and coercion are relative terms. What would put in fear a timid girl or weak woman or man might not terrorize the strong and resolute. All are alike entitled to the protection of the law." (*Franklin Union* v. *People*, 220 Ill. 355, 379.)

In 1965, Section 12-6 was amended to include a felony penalty in addition to the misdemeanor punishment (Illinois Revised Statutes, 1967, Chapter 38, Section 12-6).

(2) First Amendment Cases.

In 1896, the Court firmly stated that the first Amendment protections included exceptions in its application—that all exercises of speech need not be tolerated (*Robertson* v. *Baldwin*, 165 U. S. 275, 281). As later stated by Chief Justice Hughes in *Cox* v. *New Hampshire*, 312 U. S. 569 (p. 574):

> "Civil liberties, as guaranteed by the Constitution imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses."

This concept was reaffirmed by Mr. Justice Frankfurter in his concurring opinion in *Dennis* v. *United States*, 341 U. S. 494, where it was stated (p. 523):

> "Free speech is subject to prohibition of those abuses of expression which a civilized society may forbid."

Two general tests were initially propounded by the Court in determining whether the speech engaged in was protected by the First Amendment. In *Gompers* v. *Buck Stove & R. Co.*, 221 U. S. 418, the Court stated that when speech was exercised in certain contexts, the speech acquired additional elements not inherent in the words themselves and thereby lost its original character (p. 439):

> "In the case of an unlawful conspiracy, the agreement to act in concert when the signal is published gives the words 'Unfair', 'We don't patronize', or similar expressions, a force not inhering in the words themselves, and therefore exceeding any possible right of speech which a single individual might have. Under such circumstances they become what have been called 'verbal acts', and as much subject to injunction as the use of any other force whereby property is unlawfully damaged."

A different situation was presented by *Schenck* v. *United States*, 249 U. S. 48, and its five companion cases[3] involving the constitutionality and application of the Espionage Act of June 15, 1917. These cases involved speech in its pure form: the writing of pamphlets and the giving of a speech. The test to be applied in this kind of situation was cogently stated by Mr. Justice Holmes (p. 52):

> "The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent."[4]

The thrust of this approach was to insure maximum protection of that kind of speech which basically involved the

3. *Frohwerk* v. *United States*, 249 U. S. 204; *Abrams* v. *United States*, 250 U. S. 616; *Debs* v. *United States*, 249 U. S. 211; *Schaefer* v. *United States*, 251 U. S. 467; *Pierce* v. *United States*, 252 U. S. 238.

4. In *Whitney* v. *California*, 274 U. S. 357, Mr. Justice Brandeis, in his concurring opinion, added that the evil must be both substantive and substantial.

dissemination, exposition or advocacy of ideas. As stated by Mr. Justice Holmes in his dissent in *Abrams* v. *United States*, 250 U. S. 616 (p. 628):

> "It is only the present danger of immediate evil or an intent to bring it about that warrants Congress in setting a limit to the expression of opinion where private rights are not concerned."

A third category of cases was exemplified by the problem presented in *Milk Wagon Drivers Union* v. *Meadowmoor Dairies*, 312 U. S. 287—the category of speech plus conduct. Here it was held that picketing, following a series of acts of violence, could be enjoined. The Court's approach to the speech plus conduct method of communication was well summarized in *Giboney* v. *Empire Storage and Ice Co.*, 336 U. S. 490 (p. 502):

> "It is true that the agreements and course of conduct here were as in most instances brought about through speaking and writing. But it has never been deemed an abridgement of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written or printed."

While these or similar categorizations of speech are readily discernible from the Court's opinions, the approach to each case is not capable of being so neatly refined. Indeed, throughout the history of First Amendment cases, the Court, while acknowledging the different interests and problems posed by speech in its pristine form, verbal acts, and speech plus conduct, has steadfastly refused to allow such categories to inhibit its analysis or decisions. The reason is evident. Speech in its manifold forms is too important and vital a part of our democracy to be subjected to strict categorizations or rigid tests. Just as the exercise of free speech needs "breathing room" to survive (*N. A. A.*

C. P. v. *Button*, 371 U. S. 415, 433), so too does the application of First Amendment principles.

Certain consistencies, nonetheless, do emerge. First, the expression and advocacy of ideas will be jealously guarded against any but the most necessary encroachments; second, speech when contextually used to bring other considerations into focus will be the subject of reasonable prohibitions; and third, speech plus conduct may be subjected to closer scrutiny under a balance of interests test.

The "clear and present danger" test was applied in the following cases: *Schenck, Frohwerk, Debs, Abrams, Schaefer, Pierce, Whitney*[5] (concurring opinion), *Cantwell*,[6] *Bridges*,[7] *Terminello*,[8] *Feiner*[9] and *Dennis*.[10] These cases have a single thread connecting them—each involved speech in its primary form and therefore was subject to the closest of scrutiny. The "balancing of interests" test or a variation thereof was applied in the following cases: *Davis*,[11] *Gitlow*,[12] *Milk Wagon Drivers Union*,[13] *Douds*,[14] *Harriss*,[15] *NAACP* v. *Alabama*,[16] *Bryant*,[17] *Speiser*,[18] *Bates*,[19]

5. 274 U. S. 357.
6. 310 U. S. 296.
7. 314 U. S. 252.
8. 337 U. S. 1.
9. 340 U. S. 315.
10. 341 U. S. 494.
11. 167 U. S. 43.
12. 268 U. S. 652.
13. 312 U. S. 292.
14. 339 U. S. 382.
15. 347 U. S. 612.
16. 357 U. S. 449.
17. 278 U. S. 63.
18. 357 U. S. 513.
19. 361 U. S. 516.

Talley,[20] *Button*,[21] and *Edwards*.[22] In these cases a determining factor was whether a sufficient legitimate state interest was involved, and most of the cases involved verbal acts or speech plus conduct. Yet, it must be noted that the determinations in these cases may have been the same regardless of the test utilized. That the test alone was not determinative of the decision is illustrated in the *Whitney* case (concurring opinion of Mr. Justice Brandeis applying the "clear and present danger" test), and more recently in *Cox* v. *Louisiana*, 379 U. S. 559, where the Court used a variation of the "balance of interests" test but specially noted its decision would be the same under the "clear and present danger" test (p. 566).

What emerges from this summary review of selected cases is that neither the test applied nor the category into which the speech falls is necessarily determinative of the constitutionality of a statute or its application. Rather, a totality of circumstances will be examined in light of the numerous interests involved.

Regardless of the circumstances presented, the Court has qualified its opinion to make speech combined with force or illegal conduct outside the scope of protection of the First Amendment. A survey of such cases is illustrative:

In *Gompers*, a contempt case based upon the violation of an injunction prohibiting certain publications, the Court stated that when words were used in certain contexts they assumed a force not inhering in the words themselves and became "verbal acts".

In *Schenck*, Mr. Justice Holmes emphasized that the content of the circulars need be judged in the context of their use, adding (p. 52):

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20. 362 U. S. 60.
21. 371 U. S. 415.
22. 372 U. S. 229.

> "But the character of every act depends upon the circumstance in which it is done. . . . The most stringent protection of free speech would not protect a man in falsely shouting fire in a theater, and causing panic. It does not even protect a man from an injunction against *uttering words that may have all the effect of force.*" (Emphasis added.)

In *Milk Wagon Drivers Union* v. *Meadowmoor Dairies*, an injunction case prohibiting picketing by a union because of a background of violence, the Court stated (p. 293):

> "It must never be forgotten, however, that the Bill of Rights was the child of the Enlightenment. Back of the guaranty of free speech lay faith in the power of an appeal to reason by all the peaceful means for gaining access to the mind. It was in order to avert force and explosions due to the restrictions upon rational modes of communication that the guaranty of free speech was given a generous scope. But utterance in a context of violence can lose its significance as an appeal to reason and become part of an instrument of force. Such utterance was not meant to be sheltered by the Constitution."

In *Giboney*, where the issue concerned the validity of an injunction against picketing issued pursuant to a Missouri restraint of trade law, the Court, in upholding the injunction, stated as follows (pp. 498, 502):

> "It rarely has been suggested that the constitutional freedom for speech and press extends its immunity to speech or writing used as an integral part of conduct in violation of a valid criminal statute. We reject the contention now . . .
>
> "It is true that the . . . course of conduct here were as in most instances brought about through speaking and writing. But it has never been deemed an abridgment of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, or carried out by means of language either spoken, written or printed."

See also: *Gitlow* v. *New York*, 268 U. S. 652, 665, ("These words imply urging to action."); *Whitney* v. *California*, 274 U. S. 357, 378, ("State may punish incitement to commit the trespass."); *Cantwell* v. *Connecticut*, 310 U. S. 296, 309, ("Resort to epithets or personal abuse is not in any proper sense communication of information or opinion safeguarded by the Constitution."); *Bridges* v. *California*, 314 U. S. 252, 277, ("On no construction, therefore, can the telegram be taken as a threat either by Bridges or the union to follow an illegal course of action."); *Chaplinsky* v. *New Hampshire*, 315 U. S. 568, 572, ("fighting words . . . are no essential part of any exposition of ideas . . . A statute punishing verbal acts, carefully drawn so as not unduly to impair liberty of expression, is not too vague for a criminal law."); *United* v. *Petrillo*, 332 U. S. 1 (statute); *American Communications* v. *Douds*, 339 U. S. 382, 395, (government may cut off a speaker "only when his views are no longer merely views but threaten, clearly and imminently, to ripen into conduct against which the public has a right to protect itself."); *N. L. R. B.* v. *Denver Bldg. and Constr. T. Council*, 341 U. S. 675 (statute); *Roth* v. *United States* (dissenting opinion), 354 U. S. 476, 514, and *Smith* v. *California*, 361 U. S. 147, 168, (concurring opinion: "Freedom of expression can be suppressed if, and to the extent that, it is so closely brigaded with illegal action as to be an inseparable part of it."); *Speiser* v. *Randall*, 357 U. S. 513, 537, (concurring opinion: "Advocacy which is in no way brigaded with action should always be protected by the First Amendment . . . It is time for government—state or federal—to become concerned with the citizen's advocacy when his ideas and beliefs move into the realm of action."); *Brown* v. *Louisiana*, 383 U. S. 131, 168, 166, (dissenting opinion: "Governments like ours were formed to substitute the rule of law for the rule of force . . . The First Amendment, I think, protects speech, writings, and expression of views in

any manner in which they can be legitimately and validly communicated.") and *Carroll* v. *President and Commissioners of Princess Anne County*, 37 L. W. 4041, 4042 ("speech interlaced with burgeoning violence is not protected by the broad guaranty of the First Amendment").

Thus, in both majority and dissenting opinions, in both affirmances and reversals, the Court has expressed its disapproval of utterances calculated to achieve by naked coercion those ends which the speaker does not achieve by other means of communication.

It is in such context that the statute in question and the interpretation given it by the lower court is considered.

(3) The Trial Court Failed to Consider Section (a)(3) of the Illinois Intimidation Statute As a Protection of Individual Freedom of Choice.

In considering the Intimidation Section on the whole, the court below found that this statute was "designed to prohibit communications intended to compel a person to act against his will" (A. 88). After analyzing the elements of the crime of intimidation, the court carefully examined the scope of the term "threat" (A. 90):

> "The term 'threat' has a sinister and well defined meaning in common parlance and the law. It is the expression of an intention to inflict evil or injury on another! It is more than a mere expression of such intent; it is 'a menace; especially, any menace of such a nature and extent as to unsettle the mind of the person on whom it operates, and to take away from his acts that free and voluntary action which alone constitutes consent.'
>
> Implicit in the word 'threat', as it is used in a criminal statute, is this requirement: that the expression in its context have a reasonable tendency to create apprehension that its originator will act according to its tenor."

It is in light of the elements of the crime of intimidation generally, and the restricted meaning placed on the word threat by Illinois and federal courts specifically, that the constitutionality of Section 12-6 (a) (3) of the Intimidation Statute is approached.

In holding the section unconstitutional, the lower court reasoned (A. 94):

> "The provision is not vague. It is, however, overbroad since it prohibits threats of insubstantial evil. The commission of criminal offenses against persons or property is a substantial evil, and the state may legitimately proscribe the making of threats to commit such offenses. The commission of offenses against public order *only*, however, is not such a substantial evil that the state may prohibit the threat of it. Sub-paragraph (a)(3) proscribes threats to violate any penal statute. It therefore makes criminal threats such as the following: (1) threats by dissentient groups to engage in disorderly conduct, (2) threats by residents of a high-crime neighborhood to carry concealed weapons for their own protection, and (3) threats by mothers to block a dangerous state highway to demonstrate the need for increased safety measures. Indeed, the phrase 'commit any criminal offense' is so broad as to include threats to commit misdemeanors punishable by fine only. These evils are not so substantial that the state's interest in prohibiting the threat of them outweighs the public interest in giving legitimate political discussion a wide berth."

It is readily apparent that the court, in spite of its earlier reasoning, lost sight of the thrust of the statute—the protection of an individual's freedom of choice—and rather confined its analysis to the type of acts threatened. This misdirection of emphasis by the court caused the nature of the criminal acts threatened to be examined without regard to the actual intimidation caused by the threat. The overbearing of the individual's free will was subordinated to a

consideration of whether the threatened criminal act was substantial or not. Yet, as the court itself intimated, a mere statement of action or expression of intent to commit a criminal offense does not satisfy the statute. The statement must be made in such context as to raise it to the level of an extortion by threat, and the threat to commit the criminal offense, regardless of the offense, must be of such nature as to take away from the victim "that free and voluntary action which alone constitutes consent" (A. 90). It is not the substantiality of the criminal offense which is determinative, but rather its tendency to force another to surrender his will. Hence, the substantiality of the evil must go to the threat, and not to the crime threatened.

This is not a statute which prohibits threats in the abstract; it is a statute that prohibits extortion by threat, intimidation by threat, and coercion by threat. Thus, the most serious threat made without the intent to extort is not within the confines of the statute. Whether or not the threat is "substantial" depends upon the victim who is the object of the extortion. Extortion is a robbery. Weapons both great and insignificant can be used. "Substantiality" is not to be found in the weapon. It exists in the gist of the crime, the giving of the victim's property or freedom of choice because of the weapon. Surely the state has the right to protect its citizens, both public and private, from those who would subject their decision-making to threats of committing crimes.

Can it be questioned this late in our history that the state has a legitimate and important interest in ensuring that its citizens and officials act on a rational basis of free choice? This does not mean that all types of pressures be removed; it does not mean that social, economic and political protest can only be exercised within the often sterile confines of inaction. But it does mean that these forms of protest cannot be raised to a level of threats to commit

criminal acts unless the person threatened satisfies the demands. The ultimate issue is whether we are to be a government of law or a government of force.

It is from this perspective that Appellants reject the lower court's conclusion that the Intimidation Statute limits the wide berth which must be afforded legitimate political discussion. It is based on the above stated considerations that Appellants assert that the state has a legitimate interest in proscribing extortion by threats to commit criminal offenses and that such threats are outside the scope of First Amendment protections.

(4) Subsection (a) (3) of the Intimidation Statute Is Not Overbroad.

The court below held that subsection (a)(3) was not vague but it was overbroad in that it "prohibits threats of insubstantial evil." That such a conclusion is a result of an improper viewing of the object of this statute is argued above. Nevertheless, focusing upon the threatened acts alone, as the court did, a comparison of this section with similar federal and state statutes readily indicates that the scope of threatened conduct proscribed by subsection (a)(3) is narrow.

Initially, the court below chose to place no emphasis upon the adjective "criminal" that modifies the word "offense" in the said subsection. The word "offense" is defined in the Illinois Criminal Code as "a violation of any penal statute of this State." Illinois Revised Statutes, 1967, Chap. 38, § 2-12.) This would include quasi-criminal statutes such as traffic offenses and nuisances. Since the type of "offense" described in subsection (a)(3) is a "criminal offense," it would seem that, giving these words their plain meaning, they would refer to those offenses compiled in the Criminal Code. Nowhere in the Statutes of Illinois is there any reference to an offense outside the Criminal

Code as being a criminal offense. A construction of these words to give effect to their plain meaning and uphold the presumption of validity should have been made.

Even if the words "criminal offense" include all the penal statutes of Illinois, the acts which constitute such offenses are far narrower in scope than those acts which, if threatened, cause one to violate federal law. U. S. C. Title 18, § 1951, the "Hobbs Act," prohibits one from interfering with commerce by extortion. Extortion is defined therein as "the obtaining of property from another, with his consent, induced by the wrongful use of actual or threatened force, violence, or fear, or under color of official right." In *Nick* v. *U. S.*, 122 F. 2d 660, cert. den. 314 U. S. 687, rehearing denied 314 U. S. 714, rehearing denied 316 U. S. 710, the defendant labor union official made exorbitant wage demands for the union membership movie operators. He induced the movie theater owners to give him an illegal payoff by the following threat "If the contract is not signed today, there will be no operators tomorrow. I will pull the operators" (p. 667). The defendant's resulting conviction was sustained. Here the threatened conduct was a strike, which, at its worst, may be an unfair labor practice. This is not a crime under the subsection considered. Similarly, in *U. S.* v. *Compagna*, 146 F. 2d 524, cert. den. 324 U. S. 867, rehearing denied 325 U. S. 892, another movie operator conviction case, there was only threatened union activity unless the extortion demands were met. In *Carbo* v. *U. S.*, 314 F. 2d 718, a Hobbs Act violation occurred by these words "We are in for half the fighter (50% of the manager's share) or there won't be a fight," when these words were spoken by a gangster trying to continue his domination of prize fighting (p. 726). Refusing to honor a commitment to participate in a boxing match causes a breach of contract, not a crime. It is completely unrealistic to conclude, as

the lower court did, that unfair labor practices and breaches of contract are more substantial and narrower in scope than crimes.

Title 18, §§ 875, 876, and 877 prohibit extortion by interstate communications or the use of mail (App. B, pp. 29A, 30A, 31A). Here, a person who intends to extort can violate these sections by threatening to "injure the reputation of the addressee or of another or the reputation of a deceased person." Words over the phone such as "give me money or I'll tell everybody that your dead grandmother drank too much," cause a federal offense. At best, the threatened act here would be a tort. Torts are wider in scope and less substantial than crimes.

U. S. C. Title 18, § 873 (App. B, p. 32A) prohibits blackmail by threatening to inform about another's violation of any federal statute. Here, the threatened act, telling the authorities of the federal offense, is protected speech.

U. S. C. Title 18, § 837(d) (App. B, p. 32A), is a subsection of the Explosives Section and it prohibits persons who, by the use of the telephone, mail or other instrument of commerce, threaten to damage or destroy real or personal property to interfere with its use by others. Normally, such acts would be of a serious nature, but one can readily think of a situation where the threat is to destroy a rather small or insignificant piece of personalty. Threatening the burning of two pieces of lumber nailed in the shape of a cross, to cause a group of children to refrain from using a school, results in great harm caused by the threat of an insignificant act. A great multitude of acts could be threatened by a person and cause him to violate this section, and yet it is clear that the acts themselves may not be criminal offenses.

It should be noted that the above federal statutes range in penalty from $500 fines to imprisonment up to twenty years (See App. B).

An examination of the extortion, intimidation and blackmail statutes of the other states also shows that the subsection of the Illinois Intimidation Statute here in question is much narrower in scope.

Forty states include in their statutes, pertaining to extortion and blackmail, threats to accuse another of a crime.[23] As mentioned before, the act of notifying the authorities that a certain person has committed a crime is protected speech.

Seventeen states[24] prohibit extortion by threats of injuring another's reputation. Such an injury may be the subject of a tort, a much wider defined and less evil act than a crime.

In sixteen states[25] one is prohibited from intending to extort by threatening to expose one's deformity. Causing such an exposure may result in a tort or may have no legal consequence. In the same manner, nine states[26] forbid

23. Threats to Accuse One of a Crime:
Alaska, Arizona, Arkansas, Alabama, California, Connecticut, District of Columbia, Delaware, Georgia, Hawaii, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin, Illinois, see Appendix B for statutes.

24. Threats of Injury to Another's Reputation:
Alaska, Alabama, Connecticut, District of Columbia, Delaware, Florida, Georgia, Indiana, Kansas, Kentucky, Maryland, Nevada, Ohio, Tennessee, Virginia, Washington, West Virginia, Illinois, see Appendix B for statutes.

25. Threats to Expose One's Deformity:
California, District of Columbia, Delaware, Florida, Hawaii, Kansas, Kentucky, Louisiana, Minnesota, Nevada, New Mexico, Ohio, Oklahoma, South Carolina, Washington, Alabama, see Appendix B for statutes.

26. Threats to Expose a Secret:
California, Louisiana, Minnesota, Nevada, New Mexico, New York, Oklahoma, Washington, Alabama, see Appendix B for statutes.

extortion by threatening to expose a secret. Here again, such an act of exposure may be tortious or it may not. In any event, it is not conduct sufficiently evil to be raised to the level of a crime.

Three states[27] include in their extortion statutes threats relating to labor or union activities. Again, the act threatened is not as serious as a crime, but is merely a breach of contract, unfair labor practice or may even be a legal strike.

Two states[28] prohibit extortion by threatening to testify or threatening not to testify in a legal claim or defense. Two states[29] similarly prohibit extortion by threats to injure a trade, business, profession or calling. All these threatened acts are wider in scope than crimes.

Several states have proscribed extortion by threats to do acts of a very general nature. New Jersey includes threats "to do any civil injury." (N. J. Stat. Anno. § 2A:105-3.) New York includes threats to "perform any other act which would not in itself materially benefit the actor but is calculated to harm another person materially with respect to his health, safety, business, calling, cases, financial condition, reputation or personal relationships." (McKinney's Consolidated Laws of N. Y., § 135.60-9.) Nebraska, Pennsylvania, South Carolina and Utah state things simply:

> "Whoever by threats, intimidation, coercion, extortion or conspiracy obtains or seeks to obtain money . . ." (Rev. Stat. Neb. § 28-445.) "Whoever by means of written, printed or oral communication intimidates or blackmails, or extorts money or other valuable

27. Threats Relating to Labor Union Activity:
Georgia, New York, Illinois, see Appendix B for statutes.

28. Threats to Testify or Threats Not to Testify:
Georgia, New York, see Appendix B for statutes.

29. Threats to Injure Business or Trade:
Minnesota, Wisconsin, see Appendix B for statutes.

thing . . ." (Purdons Penna. Stat. Anno. Title 18 § 4801.) "Any person who verbally or by printing or writing:

(3) Compels any person to do any act or refrain from doing any lawful act against his will; . . ." (Code of Laws of S. C. § 16-566.1.)

"It is unlawful for any person to exact by threat or coercion any money, tribute or support whatsoever from any person; or to induce him by threats or coercion, to join any organization." (Utah Code Anno. Penal Code, §79-19-9.)

It is evident that the Illinois Statute in question prohibiting extortion by the threat to commit a crime, by comparison to similar federal and state statutes is not overbroad. Rather, it is a properly drawn statute "designed to promote law and order, [and] . . . safeguard legitimate interests in private and public property. (*Cox v. Louisiana*, 379 U. S. 559, 574.)

CONCLUSION

The determination by the three judge court of the unconstitutionality of Chapter 38, Section 12-6(a)(3) of the Illinois Intimidation Statute is based upon the concept that the First Amendment to the Constitution of the United States insulates threats to commit certain minor criminal acts. There is no precedent in this Court for such assertion.

Moreover, since the thrust of the statute is directed to the protection of individuals, both public and private, forced to surrender their freedom of choice, and not to the substantiality or insubstantiality of the acts threatened, as the trial court indicated, the statute is not subject to a challenge of overbreadth.

Finally, the failure of the complaint to specifically delineate a factual pattern demonstrating threatened misuse

of the statute does not require the application of *Dombrowski* v. *Pfister,* 380 U. S. 480.

Appellants, therefore, respectfully request that the decision of the trial court be set aside and that the determination of unconstitutionality of Chapter 38, Section 12-6 (a)(3) of the Illinois Intimidation Statute, Illinois Revised Statutes, 1967, be reversed.

Respectfully submitted,

EDWARD V. HANRAHAN,
State's Attorney of Cook County, Illinois,

DANIEL P. COMAN,
Chief of the Civil Division,

RONALD BUTLER,
Assistant State's Attorney,
500 Chicago Civic Center,
Chicago, Illinois 60602,
Attorney for Appellee.

DANIEL W. WEIL,
DEAN H. BILTON,
Assistant State's Attorneys,
Of Counsel.

APPENDIX A TO BRIEF.

APPLICABLE STATE STATUTES

Alabama Code

TITLE 14

§ 49. *Levying blackmail.*—Any person who shall levy, or attempt to levy blackmail on another, by making, threatening to make, or attempting to make any disclosure, oral or written, or by publication, injurious to the character of any person, for the purpose of getting money or other benefit, or maliciously for the purpose of revenge, and having a tendency to create a breach of the peace, shall, on conviction, be punished by a fine not exceeding one thousand dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, not exceeding twelve months.

§ 50. *Different kinds or modes of blackmail.*—Every person who, with intent thereby to extort or gain any money or other property or to compel or induce another to make, subscribe, execute, alter or destroy any valuable security or instrument or writing affecting or intending to affect any cause of action or defense, or any property, or to influence the action of any public officer, or to do or abet or procure any illegal or wrongful act, shall threaten, directly or indirectly:

To accuse any person of a crime; or

To do any injury to any person or to any member of his family or to any property; or

To publish or connive at publishing any libel; or

To expose or impute to any person any deformity or disgrace; or

To expose any secret; or

Whoever, either verbally, or by any letter or writing, or any written or printed communication, demands of any person, with menaces of personal injury, any chattel, money or valuable securities; or whoever accuses or threatens to accuse, or knowingly sends, or delivers any letter or writing, or any written or printed communication, with or without a name subscribed thereto, or signed with a fictitious name, or with any letter, mark or designation, accusing or threatening to accuse any person of any crime punishable by law, or of any immoral conduct, which, if true, would tend to degrade and disgrace such person, or in any way subject him to the ridicule or contempt of society; or whoever threatens to do any injury to the person or to any member of his family, or property, of any one with intent to extort or gain from such person any chattel, money or valuable security, or any pecuniary advantage whatever, or with like intent to compel the person threatened to do any act, against his will, with the intent aforesaid, is guilty of blackmail, and shall on conviction, be punished as provided in section 49 of this title.

Alaska Statutes

CODE OF CRIMINAL PROCEDURE

TITLE 11 § 11-15-300 *Blackmail*

A person who, either verbally or by written or printed communication: . . . (2) threatens to accuse another of a crime . . .; (3) threatens in any way to subject him to the ridicule or contempt of society, with intent to extort pecuniary advantage or property from him, or with intent to compel him to act against his will, is punishable by im-

prisonment in the penitentiary for not more than five years nor less than six months, or by imprisonment in a jail for not more than one year nor less than three months.

Arizona Revised Statutes

TITLE 13 § 401

A. Extortion is the obtaining of property from another with his consent induced by wrongful use of force or fear . . .

B. The fear may be induced by a threat;

(1) To do an unlawful injury to the person or property of the individual threatened or to his relative or member of his family;

(2) To accuse a person . . . of crime.

13 § 403

A person who unsuccessfully attempts, by means of a verbal threat, to extort money or other property from another, is guilty of a misdemeanor.

Arkansas Statutes Annotated

§ 41-4002

41-4002. *Blackmail defined—Penalty.*—If any person shall wilfully and maliciously send, or deliver, or make, or for the purpose of being delivered or sent shall part with the possession of any letter or writing, with or without a name subscribed thereto, or signed with a fictitious name, or with any letter, mark or designation, threatening therein to accuse any person of a crime, or to do any injury to the person or property of any one, with a view or intent to extort or gain any money or property of any description belonging to another, he shall be deemed guilty of an attempt to rob, and, on conviction, shall be fined in any sum not less than one hundred dollars [$100] or imprisoned in

the penitentiary for a period not less than one [1] nor more than five [5] years, or both. [Chapters of Digest (Apr. 12, 1869), § 3; C. & M. Dig., § 2413; Pope's Dig., § 3038.]

California Code Annotated

PENAL CODE VOL. 48

§ 518

Extortion is the obtaining of property from another, with his consent . . . induced by a wrongful use of force or fear . . .

§ 519

Fear, such as will constitute extortion, may be induced by a threat, either

1. To do an unlawful injury to the person or property of the individual threatened
2. To accuse the individual threatened . . . of a crime
3. To expose, or to impute to him or them any deformity, disgrace or crime
4. To expose any secret affecting him.

Connecticut General Statutes Annotated

TITLE 53 § 40 *Blackmail*

Any person who, either verbally or by written or printed communication, maliciously threatens to accuse another of any crime or offense or, by such communication, maliciously threatens an injury to the person, property or reputation of another, with intent thereby to extort money or any pecuniary advantage whatever or with intent to compel the person threatened to do any act against his will, shall be imprisoned not more than 10 years or fined not more than 5,000 or both.

District of Columbia Code

22-2305

Whoever verbally or in writing accuses or threatens to accuse any person of a crime or of any conduct which, if true, would tend to disgrace such other person, or in any way subject him to the ridicule or contempt of society, or threatens to expose or publish any of his infirmities or failings, with intent to extort from such other person anything of value or any pecuniary advantage whatever, or to compel the person accused or threatened to do or refrain from doing any act, and whoever with such intent publishes any such accusation against any other person shall be imprisoned for not more than 5 years or be fined not more than 1,000 or both.

Delaware Code

11 DEL. C. § 503

Whoever, knowing the contents thereof, and with intent by means thereof to extort or wrongfully gain any money or other property, sends or delivers to any other person a letter or writing whatsoever threatening to accuse any person of a crime, or to do any injury to any person or any property, or to publish or connive at publishing any libel, or to make or cause to be made any slanderous statement, or to expose any deformity of person, or to impute to any person any disgraceful act or conduct; or

Whoever, with intent to extort or wrongfully gain any money or other property, makes any other person any oral statement or communication so threatening—

Shall be fined not more than $5,000 or imprisoned not more than 5 years or both.

Florida Statutes Annotated

§ 836.05 *Threats; Extortion*

Whoever, either verbally or by a written or printed communication, maliciously threatens to accuse another of any crime or offense, or by such communication maliciously threatens an injury to the person, property or reputation of another, or maliciously threatens to expose another to disgrace, or to expose any secret affecting another, or to impute any deformity or lack of charity to another, with intent thereby to extort money or any pecuniary advantage whatsoever, or with intent to compel the person so threatened, or any other person, to do any act or refrain from doing any act against his will, shall be punished by imprisonment in the state prison not exceeding ten years.

Georgia Criminal Code

§ 26-1804

26-1804. *Theft by extortion.*—(a) A person commits theft by extortion when he unlawfuly obtains property of or from another person by threatening to:

(1) Inflict bodily injury on anyone or commit any other criminal offense; or

(2) Accuse anyone of a criminal offense; or

(3) Disseminate any information tending to subject any person to hatred, contempt, or ridicule, or to impair his credit or business repute; or

(4) Take or withhold action as a public official, or cause an official to take or withhold action; or

(5) Bring about or continue a strike, boycott, or other collective unofficial action, if the property is not demanded or received for the benefit of the group in whose interest the actor purports to act; or

(6) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

(b) Venue. In a prosecution under this section the crime shall be considered as having been committed in the county in which the threat was made or received or in the county in which the property was unlawfully obtained.

(c) It is an affirmative defense to prosecution based on paragraphs (2), (3), (4), or (6) that the property obtained by threat of accusation, exposure, lawsuit, or other invocation of official action was honestly claimed as restitution or indemnification for harm done in the circumstance to which such accusation, exposure, lawsuit, or other official action relates, or as compensation for property or lawful services.

(d) A person convited of extortion shall be punished by imprisonment for not less than one nor more than 10 years.

Hawaii Statutes

CHAPTER 283 *Extortion*

§ 283-1. *Defined.* Extortion is the wresting of anything of value from another by duress, menaces, or by any undue exercise of power. [P. C. 1869, c. 19, s. 1; R. L. 1925, s. 4196; R. L. 1935, s. 5870; R. L. 1945, s. 11270.]

§ 283-2. *Imputing crime; degrees; evidence.* Whoever commits extortion by charging or threatening to charge another or any person in whom he is especially interested by reason of marriage, relationship, guardianship, friendship or other tie, with any crime, is, in case the crime is capital, or subject to punishment by imprisonment for five years or more, guilty of extortion in the first degree; in case it is an offense of a lower grade, he is guilty of extortion in the second degree.

In prosecutions under this section, no evidence of the guilt or innocence of the party against whom the extortion is practiced, is admissible. [P. C. 1869, c. 19, ss. 2, 3; R. L. 1925, s. 4197; R. L. 1935, s. 5871; R. L. 1945, s. 11271.]

§ 283-3. *Imputing deformity or disease.* Whoever commits extortion by threatening to charge or impute any secret deformity or disease to him or any person in whom he is especially interested as aforesaid, is guilty of extortion in the second degree. [P. C. 1869, c. 19, s. 4; R. L. 1925, s. 4198; R. L. 1935, s. 5872; R. L. 1945, s. 11272.]

§ 283-4. *Threatening to injure property.* Whoever commits extortion by threatening, directly or indirectly, by words, signs or acts, to burn, destroy, waste, deface or injure his property, real or personal, or that of another in whom he is specially interested, or to do him or such other any malicious injury, is guilty of extortion in the second degree. [P. C. 1869, c. 19, s. 5; R. L. 1925, s. 4199; R. L. 1935, s. 5873; R. L. 1945, s. 11273.]

Indiana Statutes

10-3204 *Criminal Offenses*

10-3204 [2440]. *Blackmail.*—Whoever, either verbally, or by any letter or writing, or any written or printed communication, demands of any person, with menaces of personal injury, any chattel, money or valuable securities; or whoever accuses or threatens to accuse, or knowingly sends or delivers any letter or writing or any written or printed communication, with or without a name subscribed thereto, or signed with a fictitious name, or with any letter, mark or designation, accusing or threatening to accuse any person of any crime punishable by law, or of any immoral conduct, which, if true, would tend to degrade and disgrace such person, or in any way subject him to the ridicule or contempt of society; or whoever threatens to

do any injury to the person or property of any one, with intent to extort or gain from such person any chattel, money or valuable security, or any pecuniary advantage whatsoever, or with any intent to compel the person threatened to do any act against his will, with the intent aforesaid, is guilty of blackmailing, and shall, on conviction, be imprisoned in the state prison not less than one [1] year nor more than five [5] years, to which may be added a fine not exceeding one thousand dollars [$1,000]. [Acts 1905, ch. 169, § 370, p. 584.]

Iowa Statutes

CHAPTER 720.1

720.1 *Malicious threats to extort*

If any person, either verbally or by any written or printed communication, maliciously threaten to accuse another of a crime or offense, or to do any injury to the person or property of another, with intent to extort any money or pecuniary advantage whatever, or to compel the person so threatened to do any act against his will, he shall be imprisoned in the penitentiary not more than five years or be fined not exceeding one thousand dollars, or be imprisoned in the county jail not exceeding one year, or both such fine and imprisonment.

Kansas Statutes Annotated

CHAPTER 21-2412

21-2412. *Blackmail; penalty.* That whoever, either verbally or by any letter or writing or written or printed communiction sent or delivered by him, demands of any person, with menaces, any chattel, money, or valuable security; or accuses, or knowingly sends or delivers any letter or writing or any written or printed communication, with or without a name, or with any letter, mark, or designation,

accusing or threatening to accuse any person of a crime punishable by law, or of any immoral conduct, which, if true, would tend to degrade and disgrace such person, or to expose or publish any of his infirmities or failings, or in any way to subject him to the ridicule or contempt of society, or to do an injury to the person or property of any person, with intent to extort or gain from such person any chattel, money, or valuable security, or any pecuniary advantage whatsoever, or with intent to compel the person threatened to do any act against his will, with the intent aforesaid, shall be deemed guilty of a felony, and upon conviction thereof be imprisoned in the penitentiary not more than five years nor less than one year, and may be fined not more than one thousand dollars. [L. 1903, ch. 215, § 1; June 1; R. S. 1923, 21-2412.]

Kentucky Revised Statutes

435.270

Robbery, offenses of, KRS 433.120 to 433.150, 433.170

435.270 [1376q-2] *Blackmail.* Any person who, knowing the contents of the letter, and with intent by means of it to extort or gain any money or other property, or to do, abet or procure any illegal or wrongful act, sends, delivers or in any manner causes to be forwarded or received or makes or parts with for the purpose that there may be sent or delivered, any letter or other writing threatening to accuse any person of a crime, to do an injury to any person or to any property, to publish or connive at publishing any libel or to expose or impute to any person any deformity or disgrace, shall be confined in the penitentiary for not less than one nor more than ten years.

Louisiana Revised Statutes

TITLE 14 § 66

§ 66. *Extortion*

Extortion is the commuication of threats to another with the intention thereby to obtain anything of value or any acquittance, advantage, or immunity of any description. The following kinds of threats shall be sufficient to constitute extortion:

(1) A threat to do any unlawful injury to the person or property of the individual threatened or of any member of his family or of any other person held dear to him;

(2) A threat to accuse the individual threatened or any member of his family or any other person held dear to him of any crime;

(3) A threat to expose or impute any deformity or disgrace to the individual threatened or to any member of his family or to any other person held dear to him;

(4) A threat to expose any secret affecting the individual threatened or any member of his family or any other person held dear to him;

(5) A threat to do any other harm.

Whoever commits the crime of extortion shall be imprisoned at hard labor for not less than one nor more than fifteen years.

Maine Statutes

TITLE 17 § 3702

§ 3702. *Intent to extort*

Whoever, verbally or by written or printed communication, maliciously threatens to accuse another of a crime or offense, or to injure his person or property, with intent thereby to extort money or to procure any advantage from

him, or to compel him to do any act against his will, when such offense is of a high and aggravated nature, shall be deemed guilty of a felony and on conviction thereof shall be punished by a fine of not more than $500 or by imprisonment for not more than 2 years; but when such offense is not of a high and aggravated nature, shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not more than $100 or by imprisonment for not more than 11 months.

R. S. 1954, c. 130, § 28.

Maryland Statutes

ARTICLE 27 § 561, 562, 563

§ 561. *Sending, delivering, etc., threatening letter, etc.*

Every person who shall knowingly send or deliver, or shall make, and, for the purpose of being delivered or sent, shall part with the possession of any letter or writing with or without a name subscribed thereto, or signed with a fictitious name, or with any letter, mark or other designation, threatening therein to accuse any person of any crime of an indictable nature under the laws of this State, or of anything, which, if true, would bring such person into contempt or disrepute or to do any injury to the person or property of anyone, with a view or intent to extort or gain any money, goods or chattels or other valuable thing shall be guilty of felony, and being convicted thereof shall be punished by imprisonment in the penitentiary for not less than two nor more than ten years. (An. Code, 1951, § 633; 1939, § 584; 1924, § 495; 1912, § 447; 1904, § 395; 1896, ch. 396, § 257A.)

§ 562. *Threatening verbally*

Every person who shall verbally threaten to accuse any person of any crime of an indictable nature under the laws of this State, or of anything, which, if true, would bring

such person into contempt or disrepute, or to do any injury to the person or property of anyone, with a view to extort or gain any money, goods or chattels or any other valuable thing shall be guilty of felony, and being convicted thereof shall be punished by imprisonment in the penitentiary for not less than two nor more than ten years. (An. Code, 1951, § 634; 1939, § 585; 1924, §495; 1912, § 448; 1904, § 396; 1896, ch. 396, § 257B.)

§ 563. *Extorting by false accusation*

Any person who with intent to extort money or procure other profit shall falsely accuse or threaten to accuse another of any crime, or of anything which if the accusation were true would tend to bring him into contempt or disrepute, shall be deemed guilty of a misdemeanor, punishable by imprisonment in jail or the house of correction not exceeding two years. (An. Code, 1951, § 635; 1939, § 586; 1924, § 497; 1912, § 449; 1904, § 397; 1890, ch. 98.)

Annotated Laws of Massachusetts

CHAPTER 265 § 25

§ 25. *Attempt to Extort Money, etc., by Threat*

Whoever, verbally or by a written or printed communication, maliciously threatens to accuse another of a crime or offence, or by a verbal or written or printed communication maliciously threatens an injury to the person or property of another, or any police officer or person having the powers of a police officer, or any officer, or employee of any licensing authority who verbally or by written or printed communication maliciously and unlawfully uses or threatens to use against another the power or authority vested in him, with intent thereby to extort money or any pecuniary advantage, or with intent to compel any person to do any act against his will, shall be punished by im-

prisonment in the state prison for not more than fifteen years, or in the house of correction for not more than two and one half years, or by a fine of not more than five thousand dollars, or both. (RS 125, § 17; 1853, 412; GS 160, § 28; PS 202, § 29; RL 207, § 25; 1914, 635; 1918, 257, § 464; 1919, 5; 1920, 2; 1932, 211; 1953, 294.)

Michigan Statutes Annotated

§ 28.410 *Malicious threats to extort money or pecuniary advantage or to compel or prevent doing of any act.*] SEC. 213. Any person who shall, either orally or by a written or printed communication, maliciously threaten to accuse another of any crime or offense, or shall orally or by any written or printed communication maliciously threaten any injury to the person or property or mother, father, husband, wife or child of another with intent thereby to extort money or any pecuniary advantage whatever, or with intent to compel the person so threatened to do or refrain from doing any act against his will, shall be guilty of a felony, punishable by imprisonment in the state prison not more than twenty [20] years or by a fine of not more than ten thousand [10,000] dollars. (CL '48, § 750.213.)

Minnesota Statutes Annotated

§ 609.27

609.27 *Coercion*

Subdivision 1. *Acts constituting.* Whoever orally or in writing makes any of the following threats and thereby causes another against his will to do any act or forebear doing a lawful act is guilty of coercion and may be sentenced as provided in subdivision 2:

(1) A threat to unlawfully inflict bodily harm upon, or hold in confinement, the person threatened or another,

when robbery or attempt to rob is not committed thereby; or

(2) A threat to unlawfully inflict damage to the property of the person threatened or another; or

(3) A threat to unlawfully injure a trade, business, profession or calling; or

(4) A threat to expose a secret or deformity, publish a defamatory statement or otherwise to expose any person to disgrace or ridicule; or

(5) A threat to make or cause to be made a criminal charge, whether true or false; provided, that a warning of the consequences of a future violation of law given in good faith by a magistrate, peace officer, or prosecuting attorney to any person shall not be deemed a threat for the purposes of this section.

Vernon's Missouri Annotated Statutes

§ 560.130

560.130. *Robbery in third degree*

If any person shall, either verbally or by a written or printed communication, accuse or threaten to accuse another of a felony, or shall threaten to do any injury to the person or property whatever of anyone, with a view or intent to extort or gain any money or property of any description belonging to another, and shall, by intimidating him with said accusation or threat, extort or gain from him any money or property, every such offender shall be deemed guilty of robbery in the third degree. (R. S. 1939, § 4452)

Revised Statutes of Nebraska

§ 28-445

28-445. *Blackmail by threats; penalty.* Whoever, by threats, intimidation, coercion, extortion or conspiracy, obtains or seeks to obtain money or other valuable consideration, or whoever causes the same to be done directly or indirectly from any person, or compels him to perform any act not consistent with common law or equity, or whoever by such threats, coercion, intimidation, extortion or conspiracy, induces any person to surrender anything of value or relinquish any right guaranteed by the laws of Nebraska, in consideration of such threats, coercion, intimidation, extortion or conspiracy, shall be deemed guilty of blackmail, and upon conviction thereof shall be confined in the Nebraska Penal and Correctional Complex for not more than three years nor less than one year, or be fined not less than two hundred dollars nor more than five hundred dollars for each offense.

Nevada Revised Statutes

§ 205.320

205.320 *Threats constituting extortion; punishment.* Every person who, with intent thereby to extort or gain any money or other property or to compel or induce another to make, subscribe, execute, alter or destroy any valuable security or instrument or writing affecting or intended to affect any cause of action or defense, or any property, or to influence the action of any public officer, or to do or abet or procure any illegal or wrongful act, whether or not such purpose is accomplished, shall threaten directly or indirectly:

1. To accuse any person of a crime; or
2. To do an injury to any person or to any property; or

3. To publish or connive at publishing any libel; or

4. To expose or impute to any person any deformity or disgrace; or

5. To expose any secret,

shall be punished by imprisonment in the state prison for not less than 1 year nor more than 10 years, or by a fine of not more than $5,000, or by both fine and imprisonment.

[1911 C & P § 474; RL § 6739; NCL § 10423]—(NRS A 1967, 502)

New Hampshire Revised Statutes

§ 572:46

572:46 *Blackmail.* Whoever, either verbally or by a written or printed communication, maliciously threatens to accuse another of a crime or offense, or by such communication maliciously threatens an injury to the person or property of another, with intent thereby to extort money or any pecuniary advantage, or with intent to compel the person so threatened to do any act against his will, shall be imprisoned not more than ten years, or fined not more than five thousand dollars, or both.

Sources: 1907, 30:1. PL 380:39. RL 442:37.

New Jersey Statutes Annotated

§ 2A:105-3

2A:105–3. *Sending or delivering threatening letters or letters demanding money*

Any person who knowingly sends or delivers any letter or writing, whether signed or unsigned, or signed with a fictitious name:

a. Threatening to accuse any person of an indictable crime, with intent to extort any money or valuable thing; or

b. Demanding money or other valuable thing under threat of injury to person or property; or

c. Threatening to injure, maim, wound, kill or murder any person, or to burn, destroy or injure his property, or to do any civil injury to any person or to his property, though no money or other valuable thing be demanded—

Is guilty of a misdemeanor.

New Mexico Statutes

§ 40A-16-8

40A-16-8. *Extortion.* Extortion consists of the communication or transmission of any threat to another by any means whatsoever with intent thereby to wrongfully obtain anything of value or to wrongfully compel the person threatened to do or refrain from doing any act against his will.

Any of the following acts shall be sufficient to constitute a threat under this section:

A. A threat to do an unlawful injury to the person or property of the person threatened or of another;

B. A threat to accuse the person threatened, or another, of any crime;

C. A threat to expose, or impute to the person threatened, or another, any deformity or disgrace;

D. A threat to expose any secret affecting the person threatened, or another; or

E. A threat to kidnap the person threatened or another.

Whoever commits extortion is guilty of a third degree felony.

McKinney's Consolidated Laws of New York

§ 135.60

§ 135.60 *Coercion in the second degree*

A person is guilty of coercion in the second degree when he compels or induces a person to engage in conduct which the latter has a legal right to abstain from engaging in, or to abstain from engaging in conduct in which he has a legal right to engage, by means of instilling in him a fear that, if the demand is not complied with, the actor or another will:

1. Cause physical injury to a person; or

2. Cause damage to property; or

3. Engage in other conduct constituting a crime; or

4. Accuse some person of a crime or cause criminal charges to be instituted against him; or

5. Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or

6. Cause a strike, boycott or other collective labor group action injurious to some person's business; except that such a threat shall not be deemed coercive when the act or omission compelled is for the benefit of the group in whose interest the actor purports to act; or

7. Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

8. Use or abuse his position as a public servant by performing some act within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or

9. Perform any other act which would not in itself materially benefit the actor but which is calculated to harm

another person materially with respect to his health, safety, business, calling, career, financial condition, reputation or personal relationships.

Coercion in the second degree is a class A misdemeanor. L. 1965, c. 1030, eff. Sept. 1, 1967.

General Statutes of North Carolina

§ 14-118

§ 14-118. *Blackmailing.*—If any person shall knowingly send or deliver any letter or writing demanding of any other person, with menaces and without any reasonable or probable cause, any chattel, money or valuable security; or if any person shall accuse, or threaten to accuse, or shall knowingly send or deliver any letter or writing accusing or threatening to accuse any other person of any crime punishable by law with death or by imprisonment in the State's prison, with the intent to extort or gain from such person any chattel, money or valuable security, every such offender shall be guilty of a misdemeanor. (R. C., c. 34, s. 110; Code, s. 989; Rev., s. 3428; C. S., s. 4291.)

Page's Ohio Revised Code

§ 2901.38

§ 2901.38 *Blackmailing.* (GC § 13384)

No person shall, by threat delivered orally or by written or printed communication demand of another a chattel, money, or valuable security, or accuse, or knowingly send or deliver a written or printed communication, with or without a name, or with a letter, mark, or designation, accusing or threatening to accuse another person of a crime punishable by law, or of immoral conduct, which, if true, would tend to degrade and disgrace such other person, or threatening to expose or publish any of the infirmities or failings

of another, or to subject such other persons to the ridicule or contempt of society, or to do any injury to the person or property of another with intent to extort or gain from him a chattel, money, or valuable security or a pecuniary advantage, or, with intent to compel another to do an act against his will.

Whoever violates this section shall be fined not more than one thousand dollars and shall be imprisoned not less than one nor more than five years.

Oklahoma Statutes Annotated

§ 1481. *Extortion defined*

Extortion is the obtaining of property from another with his consent, induced by a wrongful use of force or fear, or under color of official right. R. L. 1910, § 2682.

§ 1482. *Threats constituting extortion*

Fear such as will constitute extortion, may be induced by a threat, either:

1st. To do an unlawful injury to the person or property of the individual threatened, or to any relative of his or member of his family; or,

2nd. To accuse him, or any relative of his or member of his family, of any crime; or,

3rd. To expose, or impute to him, or them, any deformity or disgrace; or,

4th. To expose any secret affecting him or them. R. L. 1910, § 2683.

Oregon Revised Statutes

§ 163.480

163.480. *Threatening injury or accusation of crime; intent to extort.* Any person who verbally or by any written or printed communication, threatens any injury to the

person or property of another, or that of any person standing in the relation of parent or child, husband or wife, or sister or brother to the other person, or threatens to accuse another of any crime with intent thereby to extort any pecuniary advantage or property from him, or with intent to compel him to do any act against his will, shall be punished upon conviction by imprisonment in the penitentiary for not more than 10 years, or by imprisonment in the county jail for not more than one year.

[Amended by 1963 c. 406 § 1]

Purdon's Pennsylvania Statutes Annotated

TITLE 18

§ 4801. *Blackmail*

Whoever by means of written, printed or oral communications, intimidates, or levies blackmail, or extorts money, property or other valuable thing from any person or by such means attempts to intimidate, annoy, or levy blackmail, or extort money, property or other valuable thing from any person, is guilty of a misdemeanor, and on conviction, shall be sentenced to imprisonment not exceeding three (3) years, or to pay a fine not exceeding two thousand dollars ($2,000), or both. 1939, June 24, P. L. 872, § 801.

General Laws of Rhode Island

CHAPTER 42 § 11-42-2

11-42-2. *Extortion and blackmail.*—Whoever, verbally or by a written or printed communication, maliciously threatens to accuse another of a crime or offense, or by a verbal or written or printed communication maliciously threatens any injury to the person or property of another, with intent thereby to extort money or any pecuniary advantage, or with intent to compel any person to do any

act against his will, shall be punished by imprisonment in the adult correctional institutions for not more than fifteen (15) years, or by a fine of not more than five thousand dollars ($5,000), or both.

Code of Laws of South Carolina

§ 16-566.1

§ 16-566.1. *Blackmail.*—Any person who verbally or by printing or writing:

(1) Accuses another of a crime or offense;

(2) Exposes or publishes any of another's personal or business acts, infirmities or failings; or

(3) Compels any person to do any act, or to refrain from doing any lawful act, against his will;

With intent to extort money or any other thing of value from any person, or attempts or threatens to do any of such acts, with the intent to extort money or any other thing of value, shall be guilty of blackmail, and upon conviction shall be fined not more than five thousand dollars or imprisoned for not more than ten years, or both, in the discretion of the court. (1957 (50) 191.)

Tennessee Code Annotated

Chapter 43 § 39-4301

39-4301. *Threats for purpose of extortion or obtaining action—Penalty.*—If any person, either verbally or by written or printed communication, maliciously threaten to accuse another of a crime, offense, or immoral act, or to do any injury to the person, reputation or property of another, with intent thereby to extort any money, property, or pecuniary advantage whatever, or to compel the person so threatened to do any act against his will, he shall, on conviction, be punished by imprisonment in the penitentiary

not less than two (2) years nor more than five (5) years. [Code 1858, § 4633; Shan., § 6474; mod. Code 1932, § 1080.]

Vernon's Penal Code of Texas

VOLUME 2(a) ARTICLE 1268 AND 1268(2)

ART. 1268. [1446] [966] [813] *Threatening letter*

Whoever shall knowingly send or deliver to another any letter or writing, whether signed or not, threatening to accuse such other person of a criminal offense with a view of extorting money, property, thing of value, or any advantage whatever from such other person, or threatening to kill or in any manner injure the person of such other, or to burn or otherwise destroy or injure any of his property, real or personal, or to do any other injury to such other person, shall be fined not less than one hundred nor more than one thousand dollars, and in addition thereto may be imprisoned in jail not exceeding one year. Added in revising, 1879.

ART. 1268a. *Threats to extort money*

Whoever shall threaten to take the life of any human being or to inflict upon any human being any serious bodily injury, or to burn, injure or destroy any property of any person for the purpose or with the view of extorting money or anything of value from the person threatened shall be guilty of a felony. One guilty of the above offense shall be confined in the State Penitentiary not less than five nor more than twenty-five years. Acts 1931, 42nd Leg., p. 11, ch. 10, § 1.

Utah Code Annotated

VOLUME 8 (Penal Code) § 76-19-9

76-19.9. *Coercion—Exacting money—Inducing to join organization.*—It is unlawful for any person to exact, by threat or coercion, any money, tribute or support whatsoever from any person; or to induce him, by threats or coercion, to join any organization. Any person violating any of the provisions of this section is guilty of a misdemeanor.

Vermont Statutes Annotated

TITLE 13 § 1701

§ 1701. *Definition and penalty*

A person who maliciously threatens to accuse another of a crime or offense, or with an injury to his person or property, with intent to extort money or other pecuniary advantage, or with intent to compel the person so threatened to do an act against his will, shall be imprisoned in the state prison not more than two years or fined not more than $500.00.

Code of Virginia

ARTICLE 9 § 18.1-184

§ 18.1-184. *Extorting money, etc., by threats.*—If any person threaten injury to the character, person, or property of another person or accuse him of any offense and thereby extort money, property, or pecuniary benefit or any note, bond, or other evidence of debt from him of any other person, he shall be confined in the penitentiary not less than one nor more than ten years or, in the discretion of the jury or the court trying the case without a jury, be confined in jail not exceeding one year and fined not ex-

ceeding one thousand dollars, either or both. (Code 195 § 18-232; 1960, c. 358.)

Revised Code of Washington

§ 9.33.010

§ 9.33.010 *Extortion.* Every person, who, under circumstances not amounting to robbery, shall extort or gain any money, property or advantage, or shall induce or compel another to make, subscribe, execute, alter or destroy any valuable security or instrument or writing affecting or intended to affect any cause of action or defense, or any property, by means of force or any threat, either—

(1) To accuse any person of a crime; or

(2) To do any injury to any person or to any property; or

(3) To publish or connive at publishing any libel; or

(4) To expose or impute to any person any deformity or disgrace; or

(5) To expose any secret,

Shall be guilty of extortion and shall be punished by imprisonment in the state penitentiary for not more than five years.

§ 9.33.060 *Coercion.* Every person who, with intent to compel another to do or abstain from doing an act which such other person has a right to do, or abstain from doing, shall wrongfully and unlawfully—

(1) Use violence or inflict injury upon such other person or any of his family, or upon his property, or threaten such violence or injury; or

(2) Deprive such person of any tool, implement or clothing, or hinder him in the use thereof; or

(3) Attempt to intimidate such person by threats or force, Shall be guilty of a misdemeanor.

West Virginia Code

§ 61-2-13

§ 61-2-13. *Extortion or attempted extortion by threats; penalties*

If any person threaten injury to the character, person or property of another person, or to the character, person or property of his wife or child, or to accuse him or them of any offense, and thereby extort money, pecuniary benefit, or any bond, note or other evidence of debt, he shall be guilty of a felony, and, upon conviction, shall be confined in the penitientiary not less than one nor more than five years. And if any person make such threat of injury or accusation of an offense as herein set forth, but fail thereby to extort money, pecuniary benefit, or any bond, note or other evidence of debt, he shall be guilty of a misdemeanor, and, upon conviction, shall be confined in jail not less than two nor more than twelve months and fined not less than fifty nor more than five hundred dollars. (Code 1849, c. 191, § 13; Code 1860, c. 191, § 13; Code 1868, c. 144, § 13; 1882, c. 118, § 13; Code 1923, c. 144, § 13.)

Wisconsin Statutes Annotated

§ 943.30

943.30 *Threats to injure or accuse of crime*

Whoever, either verbally or by any written or printed communication, maliciously threatens to accuse another of any crime or offense, or to do any injury to the person, property, business, profession, calling or trade, or the profits and income of any business, profession, calling or trade of another, with intent thereby to extort money or any pecuniary advantage whatever, or with intent to compel the person so threatened to do any act against his will or omit to do any lawful act, may be fined not more than $2,000 or imprisoned not more than 5 years or both.

APPENDIX B TO BRIEF.

APPLICABLE FEDERAL STATUTES.

U. S. C. TITLE 18 § 1951

§ 1951. *Interference with commerce by threats or violence*

(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.

(b) As used in this section—

(1) The term "robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.

(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

(3) The term "commerce" means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any

point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction.

TITLE 18 §§ 875, 876, 877

§ 875. *Interstate communications*

(a) Whoever transmits in interstate commerce any communication containing any demand or request for a ransom or reward for the release of any kidnapped person, shall be fined not more than $5,000 or imprisoned not more than twenty years, or both.

(b) Whoever, with intent to extort from any person, firm, association, or corporation, any money or other thing of value, transmits in interstate commerce any communication containing any threat to kidnap any person or any threat to injure the person of another, shall be fined not more than $5,000 or imprisoned not more than twenty years, or both.

(c) Whoever transmits in interstate commerce any communication containing any threat to kidnap any person or any threat to injure the person of another, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

(d) Whoever, with intent to extort from any person, firm, association, or corporation, any money or other thing of value, transmits in interstate commerce any communication containing any threat to injure the property or reputation of the addressee or of another or the reputation of a deceased person or any threat to accuse the addressee or any other person of a crime, shall be fined not more than $500 or imprisoned not more than two years, or both.

§ 876. *Mailing threatening communications*

Whoever knowingly deposits in any post office or authorized depository for mail matter, to be sent or delivered by the Post Office Department or knowingly causes to be delivered by the Post Office Department according to the direction thereon, any communication, with or without a name or designating mark subscribed thereto, addressed to any other person, and containing any demand or request for ransom or reward for the release of any kidnapped person, shall be fined not more than $5,000 or imprisoned not more than twenty years, or both.

Whoever, with intent to extort from any person any money or other thing of value, so deposits, or causes to be delivered, as aforesaid, any communication containing any threat to kidnap any person or any threat to injure the person of the addressee or of another, shall be fined not more than $5,000 or imprisoned not more than twenty years, or both.

Whoever knowingly so deposits or causes to be delivered as aforesaid, any communication with or without a name or designating mark subscribed thereto, addressed to any other person and containing any threat to kidnap any person or any threat to injure the person of the addressee or of another, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

Whoever, with intent to extort from any person any money or other thing of value, knowingly so deposits or causes to be delivered, as aforesaid, any communication with or without a name or designating mark subscribed thereto, addressed to any other person and containing any threat to injure the property or reputation of the addressee or of another, or the reputation of a deceased person, or any threat to accuse the addressee or any other person of a crime, shall be fined not more than $500 or imprisoned not more than two years, or both.

§ 877. *Mailing threatening communications from foreign country*

Whoever knowingly deposits in any post office or authorized depository for mail matter of any foreign country any communication addressed to any person within the United States, for the purpose of having such communication delivered by the post office establishment of such foreign country to the Post Office Department of the United States and by it delivered to such addressee in the United States, and as a result thereof such communication is delivered by the post office establishment of such foreign country to the Post Office Department of the United States and by it delivered to the address to which it is directed in the United States, and containing any demand or request for ransom or reward for the release of any kidnaped person, shall be fined not more than $5,000 or imprisoned not more than twenty years, or both.

Whoever, with intent to extort from any person any money or other thing of value, so deposits as aforesaid any communication for the purpose aforesaid, containing any threat to kidnap any person or any threat to injure the person of the addressee or of another, shall be fined not more than $5,000 or imprisoned not more than twenty years, or both.

Whoever knowingly so deposits as aforesaid any communication, for the purpose aforesaid, containing any threat to kidnap any person or any threat to injure the person of the addressee or of another, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

Whoever, with intent to extort from any person any money or other thing of value, knowingly so deposits as aforesaid, any communication, for the purpose aforesaid, containing any threat to injure the property or reputation

of the addressee or of another, or the reputation of a deceased person, or any threat to accuse the addressee or any other person of a crime, shall be fined not more than $500 or imprisoned not more than two years, or both.

U. S. C. TITLE 18 § 873

§ 873. *Blackmail*

Whoever, under a threat of informing, or as a consideration for not informing, against any violation of any law of the United States, demands or receives any money or other valuable thing, shall be fined not more than $2,000 or imprisoned not more than one year, or both.

U. S. C. TITLE 18 § 837(d)

(d) Whoever, through the use of the mail, telephone, telegraph, or other instrument of commerce, willfully imparts or conveys, or causes to be imparted or conveyed, any threat, or false information knowing the same to be false, concerning an attempt or alleged attempt being made, or to be made, to damage or destroy any building or other real or personal property for the purpose of interfering with its use for educational, religious, charitable, residential, business, or civic objectives, or of intimidating any person pursuing such objectives, shall be subject to imprisonment for not more than one year or a fine of not more than $1,000, or both.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. [redacted] 64

JOHN S. BOYLE, Chief Judge of the Circuit Court of Cook County, Illinois; JOHN J. STAMOS, State's Attorney of Cook County, Illinois; JOSEPH I. WOODS, Sheriff of Cook County, Illinois; MAURICE W. LEE and JOHN S. LIMPERIS, Magistrates of the Circuit Court of Cook County, Illinois,

Appellants,

vs.

LAWRENCE LANDRY, ROMMELL MULLER, JOSEPH H. REYNOLDS, DAVID A. REYNOLDS, JAMES WASHINGTON, FRANK DITTO, ROBERT LUCAS, ROBERT BROWN, MICHAEL ROGERS, BERNARD HUGHES, ARNOLD FORD, VISSA MARIE TURNER, WYSINGO TURNER, ANDREW BROWN, CHARLES FLETCHER, JAMES JONES, HERMAN TOWNSEND, JEROME PARKER, RUDY HOOPER, and ACT, an Unincorporated Association,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

BRIEF FOR APPELLEES

ELLIS E. REID,
ROBERT L. TUCKER,
STANLEY A. BASS,
123 W. Madison Street,
Chicago, Illinois 60602,

Attorneys for Appellees.

MIDWEST LAW PRINTING CO., CHICAGO 60611, FINANCIAL 6-6000

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N. A. A. C. P. v. Button, 371 U.S. 415, 433, 435-37 (1963) 4, 5, 8
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Noto v. United States, 267 U.S. 290, 299-300 (1961) 6
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Thornhill v. Alabama, 310 U.S. 88, 97-98, 101-106 (1940) 4
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Other

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

JOHN S. BOYLE, Chief Judge of the Circuit Court of Cook County, Illinois; JOHN J. STAMOS, State's Attorney of Cook County, Illinois; JOSEPH I. WOODS, Sheriff of Cook County, Illinois; MAURICE W. LEE and JOHN S. LIMPERIS, Magistrates of the Circuit Court of Cook County, Illinois,

Appellants,

vs.

LAWRENCE LANDRY, ROMMELL MULLER, JOSEPH H. REYNOLDS, DAVID A. REYNOLDS, JAMES WASHINGTON, FRANK DITTO, ROBERT LUCAS, ROBERT BROWN, MICHAEL ROGERS, BERNARD HUGHES, ARNOLD FORD, VISSA MARIE TURNER, WYSINGO TURNER, ANDREW BROWN, CHARLES FLETCHER, JAMES JONES, HERMAN TOWNSEND, JEROME PARKER, RUDY HOOPER, and ACT, an Unincorporated Association,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

BRIEF FOR APPELLEES

SUMMARY OF ARGUMENT.

The question of appellees' alleged lack of standing to challenge the validity of the intimidation statute should not be considered by this Court because that question is not set forth in appellants' jurisdictional statement nor fairly comprised therein as required by Rule 15.1(c) of the rules of this court. Further, the question was one which must be decided by a single judge from whose decision an appeal must be taken to the Court of Appeals.

The Illinois intimidation statute is an overbroad restriction of freedom of speech and, as such, is invalid.

ARGUMENT.

I.

THE ISSUE RAISED IN APPELLANTS' BRIEF REGARDING THE ALLEGED LACK OF STANDING OF APPELLEES TO CHALLENGE THE VALIDITY OF THE INTIMIDATION STATUTE SHOULD NOT BE CONSIDERED BY THIS COURT.

A. The Question Was Not Set Forth In The Jurisdictional Statement Nor Fairly Comprised Therein As Required By Rule 15.1(c) Of This Court.

Supreme Court Rule 15.1(c) provides in pertinent part that only the question set forth in the jurisdictional statement or fairly comprised therein will be considered by the Court. In its jurisdictional statement, the appellants presented only one question, viz., the validity of the statute. It cannot fairly be said that the issue of standing to sue is "fairly comprised" in this issue.

B. The Question Was One Decided By A Single Judge, From Whose Decision An Appeal Must Be Taken To The Court Of Appeals.

The issue of standing to sue should have been raised on appeal to the Court of Appeals, not to the Supreme Court. 28 U.S.C. § 1253 allows appeals to the Supreme Court only when the matter was required to be heard by a three-judge district court. But the issue of standing is a matter to be decided by a single district judge, not by three judges. In *Idlewild Bon Voyage* v. *Epstein*, 370 U.S. 713, 715 (1962), the court said that "whether the complaint at least formally alleges a basis for equitable relief" is a question for a single judge.

If plaintiffs have failed to allege sufficient facts to demonstrate standing to challenge the validity of a state statute, then the complaint fails to formally allege a basis for equitable relief. Accordingly, if Judge Will erred in denying defendants' motion to dismiss, (a conclusion in which we do not concur), the appeal should have been taken to the Court of Appeals on the issue of lack of standing. By electing to appeal to the Supreme Court of the United States the appellants have waived this issue.

II.

SECTION (a) (3) OF THE ILLINOIS INTIMIDATION STATUTE IS AN OVERBROAD RESTRICTION ON FREEDOM OF SPEECH AND, AS SUCH, IS INVALID.

The court below touched on the distinction between vagueness and overbreadth. It stated (A. 69-71) the difference as follows:

> "The concept of overbreadth, on the other hand, rests on principles of substantive due process which forbid the prohibition of certain individual freedoms. The primary issue is not reasonable notice or adequate standards, although these issues may be involved. Rather the issue is whether the language of the statute, given its normal meaning, is so broad that its sanctions may apply to conduct protected by the Constitution.[41] Frequently, the resolution of this issue depends upon whether the statute permits police and other officials to wield unlimited discretionary powers in its enforcement.[42] If the scope of

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[41] *See* Collings, *supra* note 38 at 196-97.

[42] *See, e.g., Ashton* v. *Kentucky*, 384 U.S. 195, 200-201 (1966); *Shuttleworth* v. *City of Birmingham*, 382 U.S. 87, 90-92 (1965); *Edwards* v. *South Carolina*, 372 U.S. 229, 237-38 (1963).

the power permitted these officials is so broad that the exercise of constitutionally protected conduct depends on their own subjective views as to the propriety of the conduct, the statute is unconstitutional.[43]

"These concepts have particular relevance to statutes touching upon the areas of free speech and assembly. Although the state may regulate speech and assembly where the exercise of these rights conflicts with certain state interests, it may regulate only to the extent necessary to discharge these interests." A vague or overbroad statute, however, is likely to have a deterrent effect which is beyond that necessary to fulfill the state's interests. Rather than chance prosecution, people will tend to refrain from speech and assembly which might come within the statute's ambit.[45]

"Such a deterrent effect on the exercise of these rights is impermissible under the First Amendment." The Amendment was designed not only to protect these rights, but also to encourage their use. Consequently, the requirements of clarity, definiteness, and narrow scope are most strictly observed when a

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[43] *See, e.g., Shuttleworth* v. *Birmingham*, 382 U.S. 87, 90 (1965); *N. A. A. C. P.* v. *Button*, 371 U.S. 415, 433, 435-36 (1963). *See, also*, Amsterdam, *The Void-for-Vagueness Doctrine in the Supreme Court*, 109 U. of Pa. L. Rev. 67, 75-76, 80-81, 96-104 (1960). *Cf. Baggett* v. *Bullitt*, 377 U.S. 360, 371 (1964); *Smith* v. *California*, 361 U.S. 147, 151 (1961).

[44] *See De Jonge* v. *Oregon*, 299 U.S. 363, 265-66 (1937); *Stromberg* v. *California*, 283 U.S. 359 (1931); *Cf. Yates* v. *United States*, 354 U.S. 298 (1957).

[45] *Dombrowski* v. *Pfister*, 380 U.S. 479, 486-89 (1965); *N. A. A. C. P.* v. *Button*, 371 U.S. 415, 432-33 (1963); *Winters* v. *New York*, 333 U.S. 507, 519-20 (1948); *Thornhill* v. *Alabama*, 310 U.S. 88, 97-98 (1940); *Herndon* v. *Lowry*, 301 U.S. 242, 261-62 (1937).

[46] *See, e.g., Dombrowski* v. *Pfister*, *supra* at 494-96; *Freedman* v. *Maryland*, 380 U.S. 51, 59-60 (1965); *N. A. A. C. P.* v. *Button*, *supra* at 437; *Thornhill* v. *Alabama*, *supra* at 101-106.

If plaintiffs have failed to allege sufficient facts to demonstrate standing to challenge the validity of a state statute, then the complaint fails to formally allege a basis for equitable relief. Accordingly, if Judge Will erred in denying defendants' motion to dismiss, (a conclusion in which we do not concur), the appeal should have been taken to the Court of Appeals on the issue of lack of standing. By electing to appeal to the Supreme Court of the United States the appellants have waived this issue.

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"These concepts have particular relevance to statutes touching upon the areas of free speech and assembly. Although the state may regulate speech and assembly where the exercise of these rights conflicts with certain state interests, it may regulate only to the extent necessary to discharge these interests." A vague or overbroad statute, however, is likely to have a deterrent effect which is beyond that necessary to fulfill the state's interests. Rather than chance prosecution, people will tend to refrain from speech and assembly which might come within the statute's ambit.[45]

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[46] *See, e.g., Dombrowski* v. *Pfister, supra* at 494-96; *Freedman* v. *Maryland*, 380 U.S. 51, 59-60 (1965); *N. A. A. C. P.* v. *Button, supra* at 437; *Thornhill* v. *Alabama, supra* at 101-106.

statute places a possible limitation upon First Amendment rights.[47] Such scrutiny is necessary to provide a buffer between the valid exercise of the police power by the state and excessive restriction of the free dissemination of ideas.[48]

"A number of factors are taken into consideration in determining whether a state regulation meets these standards of clarity and narrowness. Among them are: (1) whether a substantial interest worthy of protection is identified or apparent from the language of the statute;[49] (2) whether the terms of the regulation are susceptible to objective measurement by men of common intelligence;[50] (3) whether those charged with its enforcement are vested only with limited discretion;[51] (4) if penal, whether some element of knowledge or intent to obstruct a state in-

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[47] *E.g., Keyishian* v. *Board of Regents*, 385 U.S. 589, 603-04 (1967); *Cox* v. *Louisiana*, 379 U.S. 536, 551-52 (1965); *Edwards* v. *South Carolina*, 372 U.S. 229, 237-38 (1963); *Cramp* v. *Board of Public Instruction*, 368 U.S. 278, 287-88 (1961).

[48] This rationale has been described most succinctly by Mr. Justice Brennan for the Court in *N. A. A. C. P.* v. *Button*, 371 U.S. at 433: "These freedoms are delicate and vulnerable, as well as supremely precious in our society. The threat of sanctions may deter their exercise almost as potently as the actual application of sanctions . . . Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity." *See, also,* Amsterdam, *supra* note 43 *supra*.

[49] *See* Note, 80 Harv. L. Rev. 1773, 1788 (1967).

[50] *See Keyishian* v. *Board of Regents*, 385 U.S. 589, 604 (1967). *See, also,* authorities cited in note 40 *supra* and accompanying text.

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terest is required,[52] and (5) whether its clarity is dependent upon manifold cross-reference to interrelated enactments or regulations.[53]"

The so-called "freedom of choice" notion urged in the brief of the appellants is one which in and of itself could lead to undue restriction of legitimate First Amendment freedoms. This statute is not an extortion statute in the historical sense. Obviously, when public officials are the so-called victims of a violation of this statute, classical First Amendment freedoms are effectively "chilled". The fact that they are effectively chilled with no resulting substantial benefit to the state is the inherent constitutional flaw in Section 12-6(a)(3) of the Illinois Intimidation Statute (Chapter 38, Section 12-6 (a)(3) Ill. Rev. Stats. 1967).

It is clear that the statute as it now exists would encompass any direct action or protest activities of the appellees directed at political, economic and social institutions who would and should be pressurized to meet appellees demands to end racial discrimination. The references in appellants' brief to other federal and state

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[52] *See Adderley* v. *Florida*, 385 U.S. 39, 42-43 (1967). *See also, Cox* v. *Louisiana*, 379 U.S. 559 (1965), wherein a Louisiana statute regulating picketing in or near a court house "with intent to interfere" with the administration of justice was upheld as valid on its face. On other occasions, the Supreme Court when holding a statute unconstitutional has emphasized the fact that the law reached innocuous acts. *Keyishian* v. *Board of Regents*, 385 U.S. 589, 599-601 (1967); *Baggett* v. *Bullitt*, 377 U.S. 360, 368-72 (1964). Moreover, the Supreme Court has held on a number of occasions that a conviction based upon membership in a group which pursues illegal ends requires a specific intent to further such ends. *See Elfbrant* v. *Russell*, 384 U.S. 11, 19 (1966); *Cramp* v. *Board of Public Instruction*, 368 U.S. 278, 285-87 (1964); *Noto* v. *United States*, 267 U.S. 290, 299-300 (1961). *Cf.* Collings, *supra* note 38 at 227-231.

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[53] *See Keyishian* v. *Board of Regents*, 385 U.S. 589, 604 (1967).

extortion statutes (pp. 24-28) has very little relevance here in light of the fact that the intimidation statute is much more broad and vague than the classical crime of extortion. Under the "freedom of choice" banner the appellants seek to tighten the political noose around any individual or group who seek to change the existing political order through the method of direct action and protest activities thereby elevating what would ordinarily be a misdemeanor (if carried through to fruition) to a felony with a penalty of up to five years in the penitentiary and a fine not to exceed $5,000.00 or both. Public officials are not so timid that they need this kind of stick to assure their "freedom of choice". There can be no question but that the examples cited by the court below fall within the shadow of the intimidation statute, to-wit, threats by dissentient groups to engage in disorderly conduct; threats by residents of a high crime neighborhood to carry concealed weapons for their own protection; and threats by mothers to block a dangerous state highway to demonstrate the need for increased safety measures (A. 94). The court below concluded that the phrase "commit any criminal offense" is so broad as to include threats to commit misdemeanors punishable by fine only. The court noted that these evils are not so substantial that the state's interest in prohibiting the threat of them outweighs the public interest in giving legitimate political discussion a wide berth. The court concluded that that language was an overbroad restriction on freedom of speech and therefore invalid. It noted that if the threat is carried out, the persons who violate the criminal law by their acts are subject to punishment (A. 94, 95).

The court below pointed out (A. 88, 89):

> "Legitimate political expression intended to secure changes in society's legal, political, social, or economic structure frequently takes the form of expressions about future events or conditions. Such expression may be in the form of promises, predictions or warnings, or threats of lawful action.
>
> "While we doubt that threats of the character prescribed by the Illinois Intimidation statute are legitimate forms of expression, the point at which legitimate expression becomes coercive expression of unlawful intent is not easily determined, especially in the heat of public debate. The freedoms of expression, however, are extremely vulnerable to excessive restriction.
>
> 'The threat of sanctions may deter their exercise almost as potently as the actual application of the sanctions . . . Because the First Amendment freedoms need breathing space to survive, the government may regulate in the area only with narrow specificity.' (*N.A.A.C.P.* v. *Button*, 371 U.S. 415, 433 (1963). See, also, *New York Times Co.* v. *Sullivan*, 376 U.S. 254, 271-72 1964; *Cantwell* v. *Connecticut*, 310 U.S. 296, 311 (1940)) The necessity for such 'breathing space' requires that only threats of substantial evil be proscribed. (See, e.g., *Dennis* v. *United States*, 341 U.S. 494, 507-510 (1951); *Martin* v. *Struthers*, 319 U.S. 141, 143-44 (1943); *Schneider* v. *State*, 308 U.S. 147, 161 (1939))"

Simply stated, it serves no useful function to broaden a statute to the point of chilling legitimate political dissent in order to get at the evils of the crimes of blackmail and extortion. Thus the Illinois Intimidation Statute is constitutionally invalid.

CONCLUSION.

For the above and foregoing reasons, appellees respectfully request that the decision of the trial court as to the unconstitutionality of Chapter 38, Section 12-6(a)(3) of the Illinois Intimidation Statute, Ill. Rev. Stats. 1967, be affirmed.

Respectfully submitted,

ELLIS E. REID,
ROBERT L. TUCKER,
STANLEY A. BASS,
123 W. Madison Street,
Chicago, Illinois 60602,
Attorneys for Appellees.

APPENDIX

ERRATUM: The second paragraph on page 88 of the appendix filed in this cause should read as follows:

This statute is an omnibus provision designed to prohibit all manner of threats and unlawful communications intended to compel a person to act against his will. (Footnote 88) The State of Illinois unquestionably has a legitimate interest in protecting persons from coercion by threats, *even though expression is involved.* "*[I]t has never been deemed* an abridgement of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried by means of language, either spoken, written, or printed." (Footnote 89) (Emphasis added)

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 4.—October Term, 1970

John S. Boyle, Chief Judge of the Circuit Court of Cook County, Illinois, et al., Apellants, *v.* Lawrence Landry et al.	On Appeal From the United States District Court of the Northern District of Illinois.

[February 23, 1971]

Mr. Justice Black delivered the opinion of the Court.

This action was brought in federal court by seven groups of Negro residents of Chicago, Illinois, seeking a declaratory judgment and an injunction against the enforcement of a number of Illinois statutes and Chicago ordinances on the grounds that they violated various provisions of the Federal Constitution. The complaint named as defendants and sought relief against a number of officials of Cook County and the City of Chicago: the Mayor, the Chief Judge, and two Magistrates of the Circuit Court, the State's Attorney for the county, the Sheriff, the Superintendent of Police, the city's Corporation Counsel and his assistant, and three city police officers. Their complaint challenged as invalid the Illinois statutes prohibiting mob action,[1] resisting arrest,[2] aggravated assault,[3] aggravated battery,[4] and intimidation.[5] They alleged that some of the plaintiffs had been arrested under some of these statutes and that those prosecutions were currently pending in Illinois state

[1] Ill. Rev. Stat., c. 38, § 25–1.
[2] Ill. Rev. Stat., c. 38, § 31–1.
[3] Ill. Rev. Stat., c. 38, § 12–2.
[4] Ill. Rev. Stat., c. 38, § 12–4.
[5] Ill. Rev. Stat., c. 38, § 12–6.

courts, and that Negroes were being intimidated in the exercise of their First Amendment rights (1) through the wholesale use of all the statutes alleged to be unconstitutional to prosecute members of the Negro community and (2) through the use of arrests without probable cause, coupled with the setting of exorbitant bail. The complaint contended that the defendants had threatened to enforce all of the named statutes for the sole purpose of harassing and intimidating the plaintiffs. They requested the convening of a three-judge federal court under 28 U. S. C. §§ 2281 and 2284, a declaration that the challenged statutes were unconstitutional, and temporary and permanent injunctions prohibiting the pending and any possible future prosecutions under the statutes in question.

The defendants answered by opposing the convening of a three-judge court and the issuance of a temporary injunction, and moved to dismiss the complaint on the grounds, among others, that (1) as to those plaintiffs against whom prosecutions were then pending, there was an adequate remedy at law in that they would be able to present their constitutional challenges to the statutes involved in the pending criminal proceedings, and that as to such plaintiffs the court was barred by 28 U. S. C. § 2283 from issuing an injunction against state court proceedings,[*] and that (2) as to those plaintiffs without matters pending in the state courts, there were no facts alleged in the complaint showing that any of those plaintiffs were threatened with prosecution under any of the challenged statutes, or that they would suffer any irrep-

[*] 28 U. S. C. § 2283 provides that:
"A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

arable injury if they were required to defend any prosecution that might be brought against them in state court.

The single federal district judge denied the defendants' motion to dismiss and convened the three-judge court.[7] The three-judge court upheld all of the challenged statutes except for one subsection of the mob action statute which prohibited "The assembly of 2 or more persons to do an unlawful act . . . ,"[8] and one subsection of the intimidation statute which prohibited intimidating a person by threats to "Commit any criminal offense. . . ."[9] These last two subsections were declared invalid on the grounds that they were overly broad and might sweep within their scope conduct that could not constitutionally be made criminal. The court decreed that the defendants—city and county officials—"be and they are hereby perpetually enjoined and restrained from the enforcement of or the prosecution under" the two statutory subsections it declared unconstitutional. The defendant officials did not appeal the three-judge court's declaration and injunction invalidating the challenged subsection of the mob action statute

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[7] The District Judge found that the challenges to various city ordinances were not appropriate for determination by a three-judge court and these claims were not certified to the three-judge court. In addition, the plaintiffs abandoned their challenge to the constitutionality of the Illinois aggravated assault and aggravated battery statutes.

[8] Ill. Rev. Stat., c. 38, § 25–1, provides that:

"(a) Mob action consists of any of the following:

. . . . .

"(2) The assembly of 2 or more persons to do an unlawful act . . . ."

[9] Ill. Rev. Stat., c. 38, § 12–6, provides that:

"(a) A person commits intimidation when, with intent to cause another to perform or to omit the performance of any act, he communicates to another a threat to perform without lawful authority any of the following acts:

"(3) Commit any criminal offense . . . ."

and that holding is therefore not before us. We have before us only the court's declaration of the unconstitutionality and injunction against the enforcement of one subsection of the intimidation statute.

It is obvious that the allegations of the complaint in this case fall far short of showing any irreparable injury from threats or actual prosecutions under the intimidation statute or from any other conduct by state or city officials. Not a single one of the citizens who brought this action had ever been prosecuted, charged, or even arrested under the particular intimidation statute which the court below held unconstitutional. All the charges of the complaint deal broadly and generally with all the state statutes and city ordinances that the appellees originally challenged. In fact, the complaint contains no mention of any specific threat by any officer or official of Chicago, Cook County, or the State of Illinois to arrest or prosecute any one or more of the plaintiffs under that statute either one time or many times. Rather, it appears from the allegations that those who originally brought this suit made a search of state statutes and city ordinances with a view to picking out certain ones that they thought might possibly be used by the authorities as devices for bad-faith prosecutions against them. There is nothing contained in the allegations of the complaint from which one could infer that any one or more of the citizens who brought this suit is in any jeopardy of suffering irreparable damages if the State is left free to prosecute under the intimidation statute in the normal manner. As our holdings today in *Younger* v. *Harris, ante,* and *Samuels* v. *Mackell, ante,* show, the normal course of state criminal prosecutions cannot be disrupted or blocked on the basis of charges which in the last analysis amount to nothing more than speculation about the future. The policy of a

century and a half against interference by the federal courts with state law enforcement is not to be set aside on such flimsy allegations as those relied upon here.

For the reasons set out above and for those set out at greater length today in *Younger* and *Samuels*, we reverse.

Reversed and remanded.

MR. JUSTICE BRENNAN, MR. JUSTICE WHITE, and MR. JUSTICE MARSHALL concur in the result.

For opinion of MR. JUSTICE STEWART concurring in this case see No. 2.

SUPREME COURT OF THE UNITED STATES

Nos. 2 AND 4.—OCTOBER TERM, 1970

Evelle J. Younger, Appellant, v. John Harris, Jr., et al.	On Appeal From the United States District Court for the Central District of California.
John S. Boyle, Chief Judge of the Circuit Court of Cook County, Illinois, et al., Appellants, v. Lawrence Landry et al.	On Appeal From the United States District Court for the Northern District of Illinois.

[February 23, 1971]

MR. JUSTICE DOUGLAS, dissenting.

The fact that we are in a period of history when enormous extrajudicial sanctions are imposed on those who assert their First Amendment rights in unpopular causes emphasizes the wisdom of *Dombrowski* v. *Pfister*, 380 U. S. 479. There we recognized that in times of repression, when interests with powerful spokesmen generate symbolic pogroms against nonconformists, the federal judiciary, charged by Congress with special vigilance for protection of civil rights, has special responsibilities to prevent an erosion of the individual's constitutional rights.

Dombrowski represents an exception to the general rule that federal courts should not interfere with state criminal prosecutions. The exception does not arise merely because prosecutions are threatened to which the First Amendment will be the profferred defense. *Dombrowski* governs statutes which are a blunderbuss by themselves or when used *en masse*—those that have an

"overbroad" sweep. "If the rule were otherwise, the contours of regulation would have to be hammered out case by case—and tested only by those hardy enough to risk criminal prosecution to determine the proper scope of regulation." *Id.*, at 487. It was in the context of overbroad state statutes that we spoke of the "chilling effect upon the exercise of First Amendment rights" caused by state prosecutions. *Ibid.*

As respects overbroad statutes we said at least as early as 1940 that when dealing with First Amendment rights we would insist on statutes "narrowly drawn to prevent the supposed evil." *Cantwell* v. *Connecticut*, 310 U. S. 296, 307.

The special circumstances when federal intervention in a state criminal proceeding is permissible are not restricted to bad faith on the part of state officials or the threat of multiple prosecutions. They also exist where for any reason the state statute being enforced is unconstitutional on its face. As Mr. Justice Butler, writing for the Court, said in *Terrace* v. *Thompson*, 263 U. S. 197, 214:

> "Equity jurisdiction will be exercised to enjoin the threatened enforcement of a state law which contravenes the Federal Constitution wherever it is essential in order effectually to protect property rights and the rights of persons against injuries otherwise irremediable; and in such a case a person, who as an officer of the State is clothed with the duty of enforcing its laws and who threatens and is about to commence proceedings, either civil or criminal, to enforce such a law against parties affected, may be enjoined from such action by a federal court of equity."

Our *Dombrowski* decision was only another facet of the same problem.

In *Younger,* "criminal syndicalism" is defined so broadly as to jeopardize "teaching" that socialism is preferable to free enterprise.

Harris' "crime" was distributing leaflets advocating change in industrial ownership through political action. The statute under which he was indicted was the one involved in *Whitney* v. *California,* 274 U. S. 357, a decision we overruled in *Brandenburg* v. *Ohio,* 395 U. S. 444, 449.[1]

If the "advocacy" which Harris used was an attempt at persuasion through the use of bullets, bombs, and arson, we would have a different case. But Harris is charged only with distributing leaflets advocating political action toward his objective. He tried unsuccessfully to have the state court dismiss the indictment on constitutional grounds. He resorted to the state appellate court for writs of prohibition to prevent the trial, but to no avail. He went to the federal court as a matter of last resort in an effort to keep this unconstitutional trial from being saddled on him.

The "anti-injunction" statute, 28 U. S. C. § 2283,[2] is not a bar to a federal injunction under these circumstances. That statute was adopted in 1793, 1 Stat. 335,[3]

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[1] See Linde, Clear and Present Danger Re-examined, 22 Stan. L. Rev. 1163 (1970).

[2] "A court of the United States may not grant an injunction to stay proceedings in a State court *except as expressly authorized by Act of Congress,* or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." (Italics added.)

[3] In its initial form the "anti-injunction" Act provided "nor shall a writ of injunction be granted [by any court of the United States] to stay any proceedings in state court." There were no exceptions. In 1875 it was subsequently modified by an insertion of the Revisors to read: "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State,

and reflected the early view of the proper role of the federal courts within American federalism.

Whatever the balance of the pressures of localism and nationalism prior to the Civil War, they were fundamentally altered by the war. The Civil War Amendments made civil rights a national concern. Those Amendments, especially § 5 of the Fourteenth Amendment, cemented the change in American federalism brought on by the war. Congress immediately commenced to use its new powers to pass legislation. Just as the first judiciary Act, 1 Stat. 73, and the "anti-injunction" statute represented the early views of American federalism, the Reconstruction statutes, including the enlargement of federal jurisdiction,[4] represent a later view of American federalism.

One of the jurisdiction-enlarging statutes passed during Reconstruction was the Act of April 20, 1871. 17

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except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy." R. S. § 720.

In *Toucey* v. *New York Life Ins. Co.*, 314 U. S. 118, 133–134, in discussing the statutory exceptions to the "anti-injunction" Act we noted that, while only bankruptcy was the explicit exception, there were others. (1) The "Removal Acts qualify *pro tanto* the Act of 1793." (2) The Act of 1853 limiting shipowners' liability "[b]eing a 'subsequent statute' to the Act of 1793, . . . [it] operates as an implied legislative amendment to it." We also added (3) the Interpleader Act of 1926 and (4) the Frazier-Lemke Act. *Toucey* limited a line of cases dealing with nonstatutory exceptions to the "anti-injunction" Act. Shortly thereafter the current language of § 2283 was written into the Judicial Code. The Revisor's Note states "the revised section restores the basic law as generally understood and interpreted prior to the Toucey decision." Both pre-*Toucey* and post-*Toucey* decisions recognize implied legislative exceptions to the "anti-injunction" Act. See *Porter* v. *Dicken*, 328 U. S. 252; *Leiter Minerals* v. *United States*, 352 U. S. 220.

[4] What is now 28 U. S. C. § 1343 (3) was added in 1871, 17 Stat. 13, and the federal question jurisdiction of 28 U. S. C. § 1331 was added in 1875. 18 Stat. 470.

Stat. 13. Beyond its jurisdictional provision that statute, now codified as 42 U. S. C. § 1893 provides:

> "Every person, who under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof *to the deprivation of any rights, privileges, or immunities secured by the Constitution* and laws, shall be liable to the party injured in an action at law, *suit in equity*, or other proper proceeding for redress." (Emphasis added.)

A state law enforcement officer is someone acting under "color of law" even though he may be misusing his authority. *Monroe* v. *Pape*, 365 U. S. 167. And prosecution under a patently unconstitutional statute is a "deprivation of . . . rights, privileges, or immunities secured by the Constitutions. "Suits in equity" obviously includes injunctions.[5]

I hold that § 1983 is included in the "expressly authorized" exception to § 2283,[6] a point not raised or considered in the much discussed *Douglas* v. *Jeanette*, 319 U. S. 157. There is no more good reason for allowing a general statute dealing with federalism passed at the end of the 18th century to control another statute also dealing with federalism, passed almost 80 years later, than to conclude that the early concepts of federalism were not changed by the Civil War.

That was the view of Judge Will in the *Boyle* case, 288 F. Supp. 200, 223. In speaking of the Civil War

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[5] We have already held that § 1983 requires no exhaustion of state remedies. *McNeese* v. *Board of Education*, 373 U. S. 668.

[6] In accord with my view are *Honey* v. *Goodman*, 432 F. 2d 333 (CA6), and *Cooper* v. *Hutchinson*, 184 F. 2d 119 (CA3). Opposed are *Gross* v. *Illinois*, 312 F. 2d 257 (CA7), and *Baines* v. *Danville*, 337 F. 2d 579 (CA4).

And see Maraist, Federal Injunctive Relief Against State Court Proceedings, 48 Tex. L. Rev. 535, 591, *et seq.* (1970).

Amendments as "a constitutional revolution in the nature of American federalism" he said:

> "This revolution, in turn, represents a historical judgment. It emphasizes the overwhelming concern of the Reconstruction Congresses for the protection of the newly won rights of freedmen. By interposing the federal government between the states and their inhabitants, these Congresses sought to avoid the risk of nullification of these rights by the states. With the subsequent passage of the Act of 1871, Congress sought to implement this plan by expanding the federal judicial power. Section 1983 is, therefore, not only an expression of the importance of protecting federal rights from infringement by the states but also, where necessary, the desire to place the national government between the state and its citizens." *Ibid.*

In *Boyle* the statute makes "intimidation" to "commit any criminal offense" an offense. The three-judge court said:

> "It . . . makes criminal threats such as the following: (1) threats by dissentient groups to engage in disorderly conduct, threats by residents of a high-crime neighborhood to carry concealed weapons for their own protection, and threats by mothers to block a dangerous state highway to demonstrate the need for increased safety measures. Indeed, the phrase 'commit any criminal offense' is so broad as to include threats to commit misdemeanors punishable by fine only. These evils are not so substantial that the state's interest in prohibiting the threat of them outweighs the public interest in giving legitimate political discussion a wide berth." 280 F. Supp. 938, 964.

Landry brought a class action challenging the constitutional validity of five sections of the Illinois statutes. They alleged arrests under all but two of the challenged sections. Just before trial they abandoned their challenge of two of the five sections. The District Court held one of the remaining sections constitutional and the "mob action" and "intimidation" sections unconstitutional. Appellants have not appealed the determination that the "mob action" section of the Illinois statutes is unconstitutional.

The Court dismisses this case because there is no showing of irreparable injury on what it describes as "flimsy allegations." *Ante*, at 5. The Court states: "There is nothing contained in the allegations of the complaint from which one could infer that any one or more of the citizens who brought this suit is in any jeopardy of suffering irreparable damages if the State is left free to prosecute under the intimidation statute in the normal manner." *Ante*, at 4. Landry and his associates, however, allege that appellants were using the intimidation section along with several other sections to harrass them, not to prosecute them in the normal manner. They allege that appellants are arresting them without warrants or probable cause, and detaining them on excessive bail. They allege that the arrests are made during peaceful demonstrations and without any expectation of securing valid convictions. In sum, Landry and his group allege that the "intimidation" section is one of several statutes which appellants are using *en masse* as part of a plan to harass them and discourage their exercise of their First Amendment rights. There is thus a lively and existing case or controversy concerning First Amendment rights. And I believe that the federal court acted in our finest tradition when it issued the stay.

As the standards of certainty in statutes containing criminal sanctions are higher than those in statutes containing civil sanctions, so are the standards of certainty touching on freedom of expression higher than those in other areas. *Winters* v. *New York*, 333 U. S. 507, 517–518. "There must be ascertainable standards of guilt. Men of common intelligence cannot be required to guess at the meaning of the enactment. The vagueness may be from uncertanty in regard to persons within the scope of the act . . . or in regard to the applicable tests to ascertain guilt."

Where freedom of expression is at stake these requirements must be more sedulously enforced.

In *Younger* there is a prosecution under an unconstitutional statute and relief is denied. In *Boyle* there is harassment but as yet no prosecution. Allegations of a prosecution or harassment under facially unconstitutional statutes should be sufficient for the exercise of federal equity powers.

Dombrowski and 42 U. S. C. § 1893 indicate why in *Boyle* federal intervention against enforcement of the state laws is appropriate. The case of *Younger* is even stronger. There the state statute challenged is the prototype of the one we held unconstitutional in *Brandenburg* v. *Ohio, supra.*

The eternal temptation, of course, has been to arrest the speaker rather than to correct the conditions about which he complains. I see no reason why these petitioners should be made to walk the treacherous ground of these statutes. They, like other citizens, need the umbrella of the First Amendment as they study, analyze, discuss, and debate the troubles of these days. When criminal prosecutions can be leveled against them because they express unpopular views, the society of the dialogue is in danger.